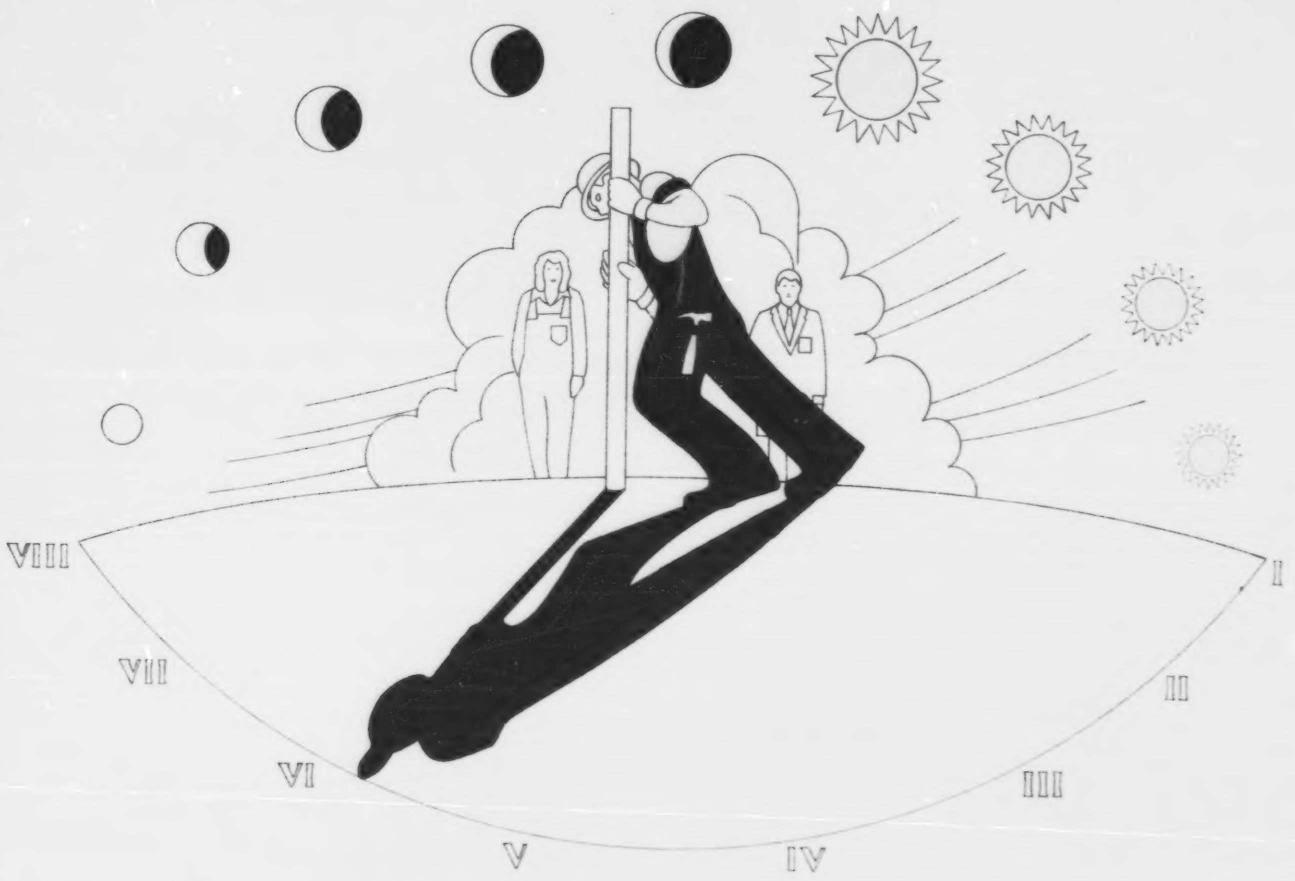
Ontario Task Force
on Hours of Work
and Overtime

Groupe d'étude de l'Ontario
sur les heures de travail et
les heures supplémentaires



Working Times: The Report of the Ontario Task Force on Hours of Work and Overtime

May 1987

The Honourable William Wrye
Minister of Labour
Government of Ontario
Toronto, Ontario

Dear Mr. Wrye:

We are pleased to submit to you the Report of the Task Force on Hours of Work and Overtime.

As your terms of reference directed us, we have considered the job-creation impacts for Ontario of a range of factors, including the standard workweek, the need for overtime work, and the regulatory process. We offer a number of recommendations dealing with these issues, many of them relating directly to the Employment Standards Act.

Emerging community standards, the job-creation effects of provincial legislation, and the need for the Ontario economy to remain competitive in the future all have been carefully weighed. Our recommendations attempt to strike a balance among these factors.

A report dealing specifically with special treatments, exemptions and exceptions in the Employment Standards Act which apply to the hours of work and overtime provisions will be prepared by the Task Force in Phase II of our work.

We hope that our research efforts and our recommendations will be useful to the Province as it adjusts to the many changing circumstances in the workplace.

Yours sincerely,

Arthur Donner

Arthur Donner
Chairman

Judith Andrew

Judith Andrew

Fitz Allison

Fitz. Allison

S Gindin

Sam Gindin

Ray Silenzi

Ray Silenzi

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May 1987

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CHAPTER 1

Introduction, Report Highlights, and Summary of Recommendations

Introduction

On January 23, 1986, the Ontario Minister of Labour, the Honourable William Wrye, appointed a Task Force to examine the issue of hours of work and overtime. The immediate impetus for the Task Force was that substantial amounts of overtime appeared to exist at the same time that other workers were unemployed or on layoff, often in the same establishment. There was the hope that restricting the amount of overtime work done by some workers would lead to new-job creation for others.

Viewed from this perspective, overtime limitations would represent a kind of worksharing whereby the hours of work would be redistributed from those who worked overtime to those who were unemployed or on layoff. This policy approach must be seen in the context of the economic conditions of the time. Canada's unemployment rate had escalated sharply in the late 1970s and early 1980s, and several key studies concluded that the country's natural unemployment rate (the rate that is consistent with a stable inflation rate) was clearly higher than the level at which governments are comfortable. Despite four consecutive years of economic recovery, in 1986 unemployment averaged 9.6 per cent in Canada and 7.0 per cent in Ontario. The problem was compounded by the fact that during the recent recovery, the longer-term unemployed increased as a proportion of the total pool of unemployment.

This bleak unemployment performance casts considerable doubt on the ability of conventional demand management policies (for example, monetary, fiscal, and exchange rate policies) to reduce unemployment significantly. As stated succinctly in the final report of the Macdonald Royal Commission (vol. 2, p. 315):

> As we Commissioners have already made clear, we accept the view that given the present structure of the economy, demand-management policies alone cannot reduce unemployment below 6.5 to 8 per cent on a sustained basis. . . . Moreover, we think that it would be very unwise to risk our recent reduction in inflation, purchased at such great cost, by attempting to use demand-management policy alone to return unemployment very rapidly to the 6.5 to 8 per cent range.

It is within this context that the Task Force regards it as legitimate to investigate supply-side measures that restrict long hours worked by some to create potential jobs for others. These are not conventional policy instruments to combat unemployment. However, with respect to the persistence of high unemployment in Canada, these are not conventional times.

Mandate

The terms of reference indicated that the Task Force should analyze a number of labour market factors: the need for overtime hours; alternatives to overtime; the job-creation potential of restrictions on hours and overtime; the effect of long hours on health, safety, and absenteeism; the effectiveness of the existing legislated provisions as well as alternatives; and the costs and other implications, for employers and employees, of suggested alternatives. Specific questions that were to be addressed by the Task Force included:

1. What improvements can be made to the hours-of-work legislation to control and restrict more effectively the scheduling of hours in excess of maximum hours, while recognizing legitimate circumstances where employers need to schedule excess hours?
2. What changes or improvements should be made to the provincial government's system for granting permission to work excess hours? That system is based on three types

of permits: 100-hour permits (which include a further 12 hours per week for maintenance and other designated occupations), special permits, and industry permits.

3. Should the weekly maximum-hours level (currently 48) after which permits are required be changed?

4. What limits should be placed on the scope of application of section 19 of the Employment Standards Act, which concerns emergency work that allows maximum hours to be exceeded without a permit?

5. Aside from the regulatory limits on permits, should the administrative process for issuing permits be tightened? What criteria can be used to grant or refuse a permit application?

6. Under what circumstances should permits be issued where there are employees on layoff in the establishment, particularly where the layoffs are in occupations for which excess hours are being requested?

7. Should union-employee concurrence be required prior to the issuing of an hours permit, or is the employee right-to-refuse provision sufficient protection for employees who do not wish to work long hours?

8. Are there constraints or conditions in collective agreements and in employer practices that contribute to employees' working long hours, and that contribute to the difficulty of complying with maximum-hours-of-work legislation?

9. In restricting the scheduling of excess hours or reducing actual hours worked, what are the cost and other implications for employers?

10. To what extent can new jobs be created by restricting the scheduling of excess hours?

11. Is there a relationship between working excess overtime hours and the health and safety or accident experience of employees?

12. Is there a relationship between working excess hours and absenteeism among employees who work such hours?

13. With respect to limiting hours of work, what are the approaches and experiences in other Canadian jurisdictions and in other countries?

14. Would a new overtime premium pay requirement (for example, double time or double-time-and-one-half for hours worked in excess of 48 or 50 per week) or partial compensation by paid time-off be an effective alternative to maximum-hours-of-work legislation?

15. Should the existing legislated provision requiring premium pay after 44 hours per week be amended?

16. To what extent do existing overtime pay practices and provisions establish expectations of income and a standard of living that would be affected by a reduction in overtime worked by employees?

17. Are there other incentives that should be considered to discourage employers from scheduling overtime and to discourage employees from wanting to work overtime?

18. Are there alternatives to the maximum-hours approach that could more effectively limit the scheduling of excess hours?

Broader Context

In addressing these questions, it became apparent to the Task Force that the overtime issue was but one component of the broader issue of alternative working time arrangements. As outlined in Chapter 11, dramatic changes are occurring in the preferences of both employees and employers with respect to hours of work. As a reflection of the increased labour force participation of women and the increased relative importance of two-earner families, there have been increased demands for flexible worktime arrangements, part-time jobs, paid and unpaid leaves, and longer vacations and more holidays. Employers too have been seeking flexibility to be able to respond quickly and in a cost-effective fashion to changing competitive pressures, de-industrialization, industrial relocation, and technological change. Governments have been under pressure to reduce unemployment, in part by creating jobs, perhaps through worksharing arrangements.

These competing pressures on employers, employees, and governments exist in the hours-of-work and overtime area. Generally, employers want flexibility to utilize overtime when necessary. Employees also generally want the option to augment their income by working overtime, especially given the overtime premium; however, they want the overtime to be voluntary. It is the unemployed and those on layoffs — persons who do not have much if any voice in the overtime decision — who may want overtime restricted in the hope that such restrictions will create new jobs.

Alternative Perspectives on Employment Standards

The work of the Task Force was complicated not only by the variety of competing objectives, but by the fact that there is no consensus on the appropriate role of employment standards legislation, of which hours of work and overtime are a part.

Providing a Safety Net

There appears to be general agreement that employment standards legislation should provide at least a set of *minimum standards* for those workers who have little individual or collective bargaining power. That is, the standards should provide a safety net below which wages and working conditions are not allowed to fall, even if the parties otherwise would voluntarily accept such arrangements. Minimum wages are an obvious example of the safety net role of employment standards.

Reflecting a Community Norm
An alternative perspective, and one that provides for a somewhat more active role for employment standards, takes the prevailing *community norm* as a guide. That norm can be reflected in collective agreements, common personnel practices, public opinion, and practices in other related jurisdictions. It can be above basic minimum standards and below that which exists in collective agreements; but precisely where within that range the appropriate community norm falls is a subject for considerable debate. Examples of standards that were reflective of the community norm, at least when they were first established, include paid holidays, vacation pay, the overtime premium and, to a certain extent, severance pay.

Providing a Leading Edge
Employment standards legislation may also be regarded as providing a *leading edge* in some areas; that is, offering an example to be emulated by subsequent collective agreements or private personnel practices. This is obviously the most intrusive form of intervention, and it is usually rationalized on the basis of attaining broader social objectives through changes in the work environment. Such changes otherwise would not occur, or would not occur at a sufficient pace, through normal collective bargaining or private personnel practices. Leading-edge examples include maternity leave, and equal pay for work of equal value legislation.

Care must be taken in using employment standards as a leading edge because, by definition, the effects of such initiatives are seldom known. Hence, a strong social justification must be present before imposing upon the parties standards that they seldom would bargain for, under collective or individual bargaining, even when they have a reasonable degree of bargaining power.

Intervention to provide minimum standards is much easier to justify, in large part because the disadvantaged, including many who are unemployed, often have no individual or collective bargaining power. In addition, they often do not even have a voice when the private parties make collective or individual decisions on such matters as hours of work and overtime. In such circumstances, it is entirely appropriate for governments to represent the interests of these otherwise disenfranchised groups.

A Set of Basic Principles

The Task Force was guided by a set of broad principles in forming its recommendations. Although these were utilized in the context of the hours-of-work and overtime issues, it was believed from the outset that they could have wider applicability.

1. *Employment standards legislation should reflect community standards*. The Task Force members reached the consensus that the community standard should prevail in terms of shaping the hours-of-work and overtime recommendations. Obviously, this still leaves the difficult problem of identifying the representative community norm, since the resolution depends in part on the possible adverse side effects of the policy initiative. As well, perspectives on community norms can change over time, reflecting social attitudes as well as the wealth of society.

2. *There is an assumed convergence of business and labour interests on many issues, especially over the long run*. Although the interests of business and labour may seem at cross purposes, the Task Force takes the view that there is also a degree of mutual interest. Labour's interest in employment and decent wages and working conditions depends considerably on the ability of employers to compete in the ever-changing, competitive world markets. And this ability to compete in large part depends on having a workforce that feels secure and fairly treated in such a changing environment; otherwise, the workforce is unlikely to cooperate with any proposed change, and that can inhibit its occurrence.

The mixture of conflict and mutual interests may differ over the short run and long run as well as across issues and between large firms and small firms. In small firms, for example, cooperation and mutual interest may be more prominent, and in fact necessary for the survival of the relationship.

There is the realization that, over the short run, the recommendations of the Task Force are unlikely to satisfy equally one or more parties on each and every issue. There is the hope, however, that the recommendations will satisfy such interests on the broader set of issues and in the long run.

It is also the view of the Task Force that employment standards should not be altered, or at least evaluated, so infrequently that they become outdated and hence come to require dramatic changes. To that end, the Task Force feels that the hours-of-work provisions in the Employment Standards Act be reviewed fairly regularly — perhaps at five-year intervals.

3. *Workers and firms should be assisted in adapting to the industrial policies related to technological change and industrial restructuring*. The Task Force is very aware that changes in the hours-of-work and overtime provisions of Ontario's

Employment Standards Act do not occur very often, and that once changes are introduced they are not easily reversed. Consequently, it is the desire of the Task Force that its recommendations be sensitive to continual changes that are occurring in industry and in labour markets in the province.

Despite a currently low unemployment rate relative to other provinces, technological change and industrial restructuring are creating considerable labour market tensions in Ontario. Furthermore, there are the ever-increasing international influences on the Canadian and Ontario economies. Whatever the effect of these changes for employment over the long term, there is the sense that high unemployment will be a reality for some time yet, even if Ontario remains relatively favoured within Canada. It is within this context that worksharing strategies, including restrictions on hours of work, are entertained as a legitimate policy instrument.

The concept of worksharing can take on a variety of meanings. It is used here to refer to a redistribution of existing hours of work from those who work overtime and long hours to those who are unemployed. The objective is to create new jobs for the unemployed by reducing the overtime and long hours of those who work such hours.

Although they are not the focus of this study, alternative forms of worksharing are also possible. Early retirement, longer vacations, education leaves, maternity leaves, unpaid leaves, and delayed entry of school-age youths into the labour market all could be regarded as having a worksharing component in that they provide openings that can be filled by others. Worksharing can also refer to specific programs such as Canada's unemployment insurance-assisted worksharing, whereby unemployment insurance is paid to workers in certain establishments that reduce their workweek from 5 days to 4 to reduce layoffs. Or it can refer to particular programs in establishments that engage in jobsharing, whereby, for example, two people share a specific job, each working half-time. Although worksharing can refer to any or all of these concepts, it is used here in the narrow sense of redistributing existing hours of work from those who work long hours to those who are unemployed.

4. Recommended changes should provide flexibility to employees and employers, and they should be practical with respect to compliance and enforcement. The recommendations should assist job creation, not detract from it. Employment standards must be regarded as flexible and fair for management, just as they are flexible and fair for workers. To impose standards that would result in disinvestment in Ontario over the long run would raise unemployment in the province. The Task Force desires to maintain a relatively flexible employment standards system, subject to the realization that pockets of high unemployment in certain industries and regions in Ontario do not appear to be a temporary phenomenon.

Consequently, the Task Force's recommendations seek to facilitate a labour market environment that strikes a balance between allowing firms the flexibility to manage their overtime work requirements while permitting workers the opportunity to choose reduced hours, should they so desire. This must be achieved within a legislative framework that is practical from the point of view of compliance and enforcement.

5. The Task Force accepts the continued justification for a maximum-hours limitation in the Employment Standards Act. Although it is not common in most Canadian jurisdictions, the need to have provincial government permission to work hours in excess of the maximum standard has been part of the Ontario legislative environment since 1884. Historically, the maximum-hours standard has been rationalized on two grounds: the need to protect the health and safety of workers, and the need to create jobs for unemployed workers through limitations on the hours of work of other workers. The Task Force recognizes that there are likely to be other, more preferred ways of creating new jobs and that there is not an established link between long hours and health and safety. Nevertheless, these two objectives still remain as legitimate as when they were first introduced into Ontario legislation.

6. The hours and overtime regulations in Ontario are working reasonably well. Consequently, the current framework should be maintained to the extent feasible. The compliance mechanism, however, has to be tightened. There is a fair amount of agreement among experts that the hours-of-work and overtime provisions of the Employment Standards Act have worked reasonably well in the past. This is exemplified by the fact that the specific concerns over regularized long hours and unusually large amounts of overtime work have surfaced only recently, under the strained economic conditions of the past few years. In response to those concerns, the existing permit system has proven itself sufficiently flexible for the Ministry of Labour to work out a pragmatic and flexible solution. That is, the Ministry is now closely monitoring the granting of new special permits for overtime work beyond the statutory maximum level. Particular sensitivity is being shown to applications for special permits when large numbers of workers are on layoff. Our research indicates, however, that compliance with the overtime provisions of the Act is clearly failing.

Format

With its mandate and these basic principles in mind, the Task Force is offering recommendations in three broad areas: recommendations specific to the hours-of-work, overtime, and vacation time parts of the Act; recommendations relating to working-time reductions in general; and recommendations designed to deal with specific issues that have surfaced as a result of our consultations or based on our research studies. Inputs into those recommendations came from six major sources: written briefs and letters from interested parties; public meetings conducted across the province; a number of commissioned background research reports (described at the end of this volume); discussions and meetings with officials experienced in administering hours-of-work and overtime legislation and representing many jurisdictions; two Task Force symposia (one on policy issues and one on research issues); and numerous meetings of the Task Force members and support staff.

The format of the report is first to describe the hours-of-work and overtime phenomenon in Ontario, how it has changed over the years, and how it varies by such factors as jurisdiction, industry, and occupation. The evolution of Ontario's legislation on hours of work and overtime is then discussed, to put the current picture in its historical perspective. Next, the current legislation is described, with an emphasis on the exemptions, special provisions, and permit systems as well as the enforcement procedure and compliance problems.

The Ontario environment is then contrasted with other jurisdictions in Canada, Europe, and the United States. Practices under collective bargaining are then documented followed by a discussion — from a theoretical and empirical perspective — of reasons for the existence of overtime. The job-creation potential of overtime restrictions is analyzed and illustrated with calculations for Ontario. Finally, alternatives to overtime and alternative policies to reduce unemployment are dealt with as are broader social issues pertaining to health and safety, women's issues, and the quality of working life in general. The recommendations are outlined in the concluding chapter. The remainder of this introductory chapter provides highlights from the report.

This report itself does not contain a comprehensive set of references to the literature on hours of work and overtime, since such references usually are provided in the relevant background research studies. In addition, this report represents only a first phase of the work of the Task Force. A report on the second phase will focus on the special problems of particular sectors (including those covered by the industry permits), and whether they require special treatment or can be dealt with under the general umbrella of the hours-of-work and overtime provisions. The four sectors that are singled out for special attention in the second phase are agriculture, construction, domestic work, and trucking.

Report Highlights

Reasons for Concern (Chapter 1)

- The current policy concern over overtime work in Ontario emerged in large part because, in some industrial establishments, substantial amounts of overtime were being worked by some employees, seemingly on a regular basis, while at the same time other workers were unemployed or on layoff, often from the same establishment.

Patterns of Hours of Work and Overtime (Chapter 2)

- Currently, overtime hours average about one hour per week per worker in Ontario. The actual incidence of overtime, however, is quite uneven, with most workers working no overtime, and about 13 per cent of the workforce averaging about 8 hours of overtime per week. A significant amount of long hours is worked in manufacturing.
- About 18 per cent of the Ontario workforce currently works an average of more than 44 hours per week (the standard workweek after which the overtime premium starts), and approximately 11 per cent averages over 48 hours weekly (the statutory maximum after which permits are required). Only about half of those who work the long hours, however, are covered by the hours-of-work and overtime provisions of the Employment Standards Act.
- The majority of Ontario workers who work the long hours do so on a regular basis, rather than in response to seasonal, cyclical, or other temporary fluctuations in output. The phenomenon of regularized long hours has captured public attention in the 1980s because of the general upward drift in the national unemployment rate.
- The extent of such long hours has actually grown over time in spite of the long-run decline of the average workweek from more than 60 hours in 1870 to fewer than 40 hours today. There appears to be increased polarization, with many people working part-time and others working long hours.
- Overtime does appear to increase with the expansionary phase of the business cycle; however, since 1975 the proportion of the workforce working long hours and the amount of overtime have increased steadily in spite of the rising unemployment over that period. The current high levels of overtime appear to

reflect both the expanding economy and an increased usage of overtime that is independent of the state of the economy. It is this possibility of "permanent" overtime co-existing with substantial unemployment that has given rise to the current policy concern.

Evolution of Legislation (Chapter 3)

- The current legislation had its origins in the provincial legislation dating back to 1884, which specified a maximum of 10 hours per day and 60 per week, but for women and youths only. In 1944 this maximum standard was modified to the current maximum of 8 hours per day and 48 hours per week, and potential coverage was extended to about half the provincial workforce. In the face of this lower weekly maximum level, however, flexibility was attained through various exceptions to the Act and the development of an elaborate permit system.
- In 1968 the legislation was further changed to require a time-and-one-half premium for work carried out after 48 hours and on 7 statutory holidays, if worked. (If not worked, the public holidays were not paid for at that time.)
- Since 1968 there have been only a few, minor modifications to the working-time provisions of the Act: the time-and-one-half premium was changed to apply after 44 rather than 48 hours; 7 paid public holidays were introduced by 1975; if those public holidays were worked, reimbursement was to be at a rate of 2.5 times regular pay, consisting of holiday pay plus 1.5 times regular pay (if not worked, the holidays were paid at the regular rate); and the annual vacation with pay was increased to 2 weeks after one year. Since 1975 there have been no changes in the hours-of-work and overtime provisions of the Employment Standards Act.
- At present, hours-of-work and overtime legislation in Ontario is embodied in the Employment Standards Act. The main features are an overtime premium of time-and-one-half to apply after 44 hours per week, and a statutory maximum of 8 hours per day and 48 per week, after which a permit must be granted or special arrangement made. Overtime after 8 hours per day and 48 hours per week must be voluntary. Currently, 7 paid statutory holidays are required as well as 2 weeks of annual paid vacation after one year of employment.

Exemptions, Special Provisions, and Permits (Chapter 4)

- Flexibility in the hours-of-work and overtime provisions is attained in four main ways: (1) exemptions for numerous groups as well as for maximum hours for hours worked on an emergency basis; (2) approved flexible work schedules, or averaging arrangements; (3) special overtime provisions, allowing overtime to start usually after 50-60 rather than 44 hours in certain sectors (for example, roadbuilding or transport); and (4) an elaborate permit system whereby permission is granted to exceed the statutory maximum.
- There are three types of excess-hours permits: (1) The 100-hour permits, which allow up to 100 hours per worker annually beyond the 48-hour-per-week maximum; they are issued automatically to individual firms upon request and remain until surrendered or withdrawn. (2) Special industry permits (there are 26), which provide the 100-hour permits to all firms within specified industries; they are issued on a permanent basis and also extend the daily maximum to 10 hours and provide specified amounts of additional annual hours to specific groups of employees. (3) Special permits for hours in excess of the 100-hour permit; they may be granted for temporary overtime upon request by a firm.
- The granting of special permits has been the subject of criticism because the permits appear to be for regular long hours rather than for temporary overtime, and yet it is difficult to develop criteria for approving or rejecting such requests. Five establishments (mainly in the transportation equipment sector) account for more than one-half of the special permits and one-third of the excess hours granted under those permits.

Enforcement and Compliance (Chapter 5)

- Enforcement of the legislation is based on complaints and routine investigations, although the latter have declined dramatically in recent years.
- About three-quarters of the complaints to the Employment Standards Branch, and one-third of the Branch's routine investigations, uncover a violation. Assessments, however, are small, averaging only about $500 per worker involved in a violation, of which on average less than one-half is collected, largely in bankruptcy and insolvency situations. Most complainants are no longer with the company, implying that employment standards legislation has evolved to deal with the severance of the employment relationship and not with its everyday functioning.
- Appeals are rare and involve the initial decision being overturned in about one-third of the cases for both the employee and employer. Employers can appeal to an outside referee, whereas employees can appeal only to a second officer.
- Noncompliance with long-hours provisions appears to be prominent in Ontario. For example, for every hour worked under a spe-

cial permit, approximately 24 hours appear to be worked without a permit. Noncompliance is prevalent for many reasons: the regulations are complex; neither employers nor employees have a self-interest in ensuring compliance because both groups often support the overtime arrangement; fear of reprisals may deter complaints; and, finally, the expected penalties are small.

Experience in Other Canadian Jurisdictions (Chapter 6)

- All Canadian jurisdictions have an overtime premium of time-and-one-half after 40, 44, or 48 hours per week; six jurisdictions (not Ontario) have a daily trigger after 8 hours.
- Most jurisdictions in Canada have no weekly maximum-hours limit. Other than Ontario, two have a daily maximum, one has a weekly maximum. Only Ontario has both a daily and weekly maximum although only the weekly maximum appears to be enforced. Because it imposes maximum-hours limits, Ontario tends to have more exemptions and special regulations, as well as an elaborate permit system, to provide flexibility.
- For the individual worker, the right to refuse overtime exists only in Saskatchewan, Manitoba, and Ontario.
- Seven paid statutory holidays in Ontario are slightly below the average for employees in other jurisdictions.
- Overall, it appears that Ontario lags behind the federal jurisdiction with respect to overtime and maximum-hours standards, and leads Quebec and the Atlantic provinces. Comparisons with British Columbia, Saskatchewan, Manitoba, and Alberta are more difficult, in part because the former three follow a policy of attempting to discourage overtime through simply applying the overtime premium after an earlier trigger, with no maximum-hours restrictions.

European Experiences (Chapter 7)

- Although it is difficult to generalize about conditions and regulations across European jurisdictions, some broad conclusions may be reached.
- European governments tend to follow more strongly interventionist labour market policies than do those in North America. Accordingly, European economies attempt to limit the workweek (mainly to create jobs for unemployed youth) by a variety of mechanisms including reductions in the standard workweek and restrictions on overtime. They have also introduced innovative schemes whereby subsidies for the hiring of new workers are given, conditional upon the reduced worktime of others, and they have proposed that all overtime be compensated by compensatory time-off.
- Legislative requirements on overtime in Europe typically only require an overtime premium of time-and-one-*quarter* after 8 hours per day, allowing only up to 2 hours of overtime per day and 10 hours per week, with annual limits ranging from 60 to 240 hours. Exemptions are common, as are compensatory time-off arrangements.
- European collective agreements, often national in scope, typically set higher premiums and even higher rates for night work, weekend work, and holiday work. Union permission is also usually required before overtime can be worked.

United States Experience (Chapter 8)

- In contrast with the European emphasis on an interventionist regulatory approach, the United States tends to rely on the market mechanism of a time-and-one-half premium after 40 hours per week, a procedure that has been in place federally since 1938 (albeit coverage has continually been extended). No maximum hours are set; hence, permits are not required to exceed maximum hours. Most states follow the federal pattern.
- Compensatory time-off at the premium rate is allowed, but only if taken in the same workweek or pay period in which it was earned. This restriction has severely limited the use of such "comp" time. State and local governments were recently exempted from this restriction.
- Individual employees do not have the right to refuse overtime under U.S. federal law.
- In 1979, proposals to increase the premium to double time, to have it commence after 35 hours per week, and to make overtime voluntary all were defeated, mainly because of concerns about overregulation. Currently, there appears to be little pressure to change; most U.S. labour standards administrators perceive there to be little job-creation potential in restricting overtime.

Practices Under Collective Bargaining (Chapter 9)

- Collective agreements in Ontario typically require a time-and-one-half overtime premium after 8 hours per day or 40 per week as well as for weekend work. Higher premium rates for Sunday and "excessive" overtime also are often required.
- Compensatory time-off at the premium rate applies to about 30 per cent of the unionized workforce; the right to refuse overtime and the requirement for an equitable distribution of overtime each prevails for about one-half of the unionized workforce. Few agreements,

however, restrict overtime in the presence of layoffs or require worksharing during slack periods.

- Common restrictions in collective agreements that can encourage overtime include restrictions on subcontracting and the use of nonbargaining unit employees. Seniority requirements, severance pay, and layoff benefits also encourage overtime.
- Overtime issues are not a major source of grievance arbitration. In fact, most of the cases involve disputes over who is entitled to get the overtime work, although many have been over the right to refuse overtime. That is, while most workers want overtime, many do not, highlighting the importance of flexible work arrangements geared to the preferences of different workers.

Reasons for Overtime (Chapters 10 and 11)

- Short-run fluctuations in demand obviously can give rise to the need for overtime; however, the question remains as to why the firm does not meet the new demand by new hires or recalls from layoff.
- Relatively high quasi-fixed costs associated with the hiring of new employees can discourage such hiring and encourage the firm to amortize costs by working its existing employees overtime. Such quasi-fixed costs can arise from numerous sources: recruiting, hiring, training, and expected termination costs; paid time off work; fringe benefits; and employers' contributions to workers' compensation, unemployment insurance, or public pensions.
- Another source of overtime work relates to shortages of skilled workers. Such shortages can lead to overtime work for those having skills that are in scarce supply; new recruits may simply not be good substitutes.
- Firms may also rely on overtime when they are uncertain about the permanency of demand changes or their own position in changing world markets. Faced with the prospect of subsequent downsizing, firms simply may be reluctant to hire new workers, preferring to work their existing workforce overtime because it is easier to downsize by reductions in overtime than through layoffs.
- Overtime may also be worked because the use of alternatives to it (other workers, inventories) may be impeded by such factors as just-in-time delivery, which reduces the availability of inventories to serve as a buffer for demand changes, or restrictions on subcontracting or the use of part-time workers.
- Changes in these factors may explain some of the increase in the use of overtime as well as its prevalence in the face of unemployment. For example, product demand fluctuations and the prospects of downsizing have been pronounced in recent years, and firms may be too uncertain about the permanency of these changes to incur the quasi-fixed costs associated with hiring and training new employees. If the future becomes more certain and the recent expansion levels off or downsizing occurs, then the use of overtime may decline somewhat. The permanency of some of the quasi-fixed costs and such factors as just-in-time delivery suggest, however, that overtime may be quite permanent. Without further knowledge about the temporary or permanent nature of these changes in the underlying determinants of overtime, it is not possible to predict whether the use of overtime will grow or decrease.
- Survey evidence indicates that about 25 per cent of the Ontario workforce would like to reduce their working hours for a proportionate reduction in pay, about 25 per cent would like to increase their hours for a proportionate increase in pay, and the remaining 50 per cent are content with their existing hours. This highlights the need for flexibility to meet the different demands of different workers. Preferred options for worktime reduction, in descending order of preference, are increased annual unpaid vacations (usually by one to 2 weeks), a reduced workweek (usually of one day), increased unpaid leave (usually of 2 months or less), and a reduced workday (usually by 1.0 to 1.5 hours).

Job-Creation Potential of Overtime Restrictions (Chapter 12)

- The job-creation potential of overtime restrictions depends upon two key linkages: the extent to which policy changes (for example, an increase in the overtime premium or a reduction in the weekly maximum-hours level) can reduce the use of overtime, and the extent to which reductions in the use of overtime lead to new jobs.
- The empirical evidence, existing only in U.S. studies, indicates that an increase in the overtime premium from time-and-one-half to double time would reduce overtime hours by about 20 per cent.
- The U.S. evidence, in turn, indicates that this could lead to *maximum* employment increases of about 1.25 per cent, with considerable variability in that estimate. About half of that job-creation potential likely would be offset by a variety of factors, including a reduced demand for labour because of higher labour costs, increased moonlighting, the lack of substitutability between those who do overtime work and potential new recruits, and noncompliance with the legislation.
- Paradoxically, a reduction in the standard workweek (that is, in hours after which the

overtime premium must be paid) could actually increase the use of overtime because new recruits would be more expensive now that they would have to be paid overtime after fewer hours. Empirical evidence indicates that the employment-enhancing effects of reductions in the standard workweek are usually insignificant. This conclusion is based exclusively on European data, however, and these sources have acknowledged methodological and data problems.

- Large-scale macroeconometric models — again exclusively European — tend to find small but positive employment-enhancing effects from reductions in the workweek.
- The only estimates that find *substantial* job-creation potential in reduced working hours are those that simply mechanically translate reduced worktime into new jobs. Such estimates, however, do not account for the fact that policy changes do not automatically lead to worktime reductions, nor do worktime reductions automatically lead to new jobs.

Illustrations for Ontario (Chapter 13)

- Estimates of the job-creation potential of various policies to restrict overtime in Ontario are extremely tentative. They are only as good as the assumptions that go into them, and we simply do not have good empirical estimates upon which to make reliable predictions.
- The job-creation potential in Ontario of various hours-of-work and overtime policies is summarized below. (The potential employment increase is approximately equal to the expected percentage point reduction in the unemployment rate.)

	Job Equivalents	
Policy	Number	As Per Cent of Employment
Elimination of long hours beyond 44 hours (maximum potential)	181,000	4.5
Assuming 50% of workforce affected	90,500	2.3
Assuming 50% of above into new jobs	45,250	1.1
Elimination of overtime hours (maximum potential)	56,309	1.4
Assuming 50% into new jobs	28,155	0.7
Increase in overtime premium from 1.5 to 2.0 after 44 hours	5,677	0.1
Introduction of employment subsidy of $400 per new hire	13,421	0.3

- Unfortunately, the policies that could have a notable impact, those that would *eliminate* all long hours or overtime hours, are difficult to effect. Overall, the *feasible* policies that would *reduce* hours of work and overtime are likely to have a small, albeit positive, effect on job creation. The effect is small in part because it is difficult to increase employment through policies that increase rather than reduce labour costs. This is illustrated by the slightly more positive effect of an employment subsidy relative to an increase in the overtime premium; the subsidy reduces labour costs, while the premium increases labour costs.

Alternatives to Overtime (Chapter 14)

- Although it is true that the currently unemployed are unlikely to be good substitutes for those who work overtime hours, it is also the case that alternatives to overtime do exist through such devices as shiftwork, job redesign, and upgrading and training.

Alternative Policies to Reduce Unemployment (Chapter 14)

- Alternative policies to reduce unemployment obviously do exist; however, worksharing policies (including restrictions on overtime) are a viable policy instrument, especially in the short run, to reduce *severe* unemployment.
- Barriers that inhibit parties from voluntarily reducing their working time are prominent in many fringe benefits such as paid holidays, sick leave, severance pay, retirement allowances, insurance premiums, some pension benefits, and ceilings on employer contributions to Workers' Compensation, Unemployment Insurance, and the Canada Pension Plan. By requiring employer contributions to be based on hours or a per cent of earnings, rather than having a fixed element per employee, this bias against worksharing could be removed, which in turn may reduce long hours and encourage new hires.

Health and Safety Issues (Chapter 15)

- While the original impetus for restricting hours of work was to "protect" the health and safety of women and youths, over time this has given way to the worksharing rationale. Nevertheless, health and safety issues remain of concern.
- In theory, the effect of overtime work on health and safety is ambiguous. Long hours can lead to health and safety problems because of fatigue, longer exposures to hazardous substances, and departures from normal work routines. New workers, however, can also create hazards because of their inexperience and their unfamiliarity with a situation.
- In practice, there is evidence that overtime hours are associated with higher injury and accident rates. It is not known, however, whether this occurs because of the long hours per se or because of other changes that are occurring when overtime increases, such as an

increase in the pace of work or a reduction in supervision or safety maintenance.

- Determining the underlying causal relationship is important if we are to know whether the appropriate policy response is to reduce overtime or to enforce health and safety standards more strictly.

Overtime and Absenteeism (Chapter 15)

- There is some evidence that overtime may lead to subsequent absenteeism when the overtime is involuntary but not when it is voluntary. The consequences of overtime on absenteeism, however, are likely to be fully considered by employers in their decision to use overtime. Hence, there is little reason for legislative restrictions on overtime *for that reason*.

Women's Issues (Chapter 15)

- Relative to men, women will be less adversely affected by restrictions on overtime because they tend to work less overtime and fewer long hours.
- They will, however, benefit less from any resulting job creation. First, in those female-dominated occupations where newly hired females would be the likely substitutes, overtime is not so prominent; and second, in those male-dominated occupations where overtime is more prominent, it is unlikely that the new hires would be female, given the occupational segregation of the workforce.
- For these reasons, overtime restrictions are unlikely to be a major issue, except perhaps for restrictions on the right to refuse overtime. This right is likely to become increasingly important to enable the growing proportion of single-parent and multiple-earner families to carry out family responsibilities while engaging in labour market work.

Quality of Work and Family Life
(Chapter 15)

- Overtime and long hours obviously can detract from family life and even the quality of work; however, they can also enhance income, which can be important to the quality of life.
- Given this possible trade-off, some analysts argue that the role of public policy should be limited to facilitating the private parties to make their own preferred worktime arrangements, subject to the constraints imposed by the market and by collective bargaining. This would involve the reduction of unintended barriers that may inhibit more flexible worktime arrangements, the making of overtime voluntary wherever that is feasible, and the providing of public information on the pros and cons of alternative worktime arrangements.
- Others argue for a stronger role for public intervention: to move society collectively to alternative and reduced worktime arrangements that will be preferred once everyone adapts to them.
- Blends of these perspectives are possible, with regulations on hours of work assuming a combination of roles: providing minimum standards, reflecting a community norm, and providing a leading edge. The emphasis would differ for the various dimensions of hours of work.
- The appropriate role of employment standards, with respect to hours of work, will involve a judicious balance between the needs of employers to be competitive in today's increasingly competitive environment, and the preferences of an increasingly diverse and heterogeneous workforce.
- Issues pertaining to hours of work and overtime are but one of the many social concerns that are arising in this context.

SUMMARY OF RECOMMENDATIONS

As outlined in more detail in Chapter 16, the Task Force makes the following recommendations:

1. The standard workweek after which an overtime premium is payable should be reduced from 44 hours to 40 hours.
2. The mandatory overtime premium rate should remain at time-and-one-half the regular rate of pay, but apply after the new standard workweek of 40 hours.
3. The current limitation on weekly hours and the 100-hour annual overtime permit system should be eliminated. In place of the 100 hours, employers would have an annual block of 250 overtime hours per employee in excess of 40 hours per week (not transferable). The 250-hour block would be implemented over a period of three years. The block would consist of 400 hours in the first year, 300 hours in the second year, and 250 hours in the third and subsequent years.
4. The current requirement that overtime be voluntary after 48 hours per week should be replaced by a requirement that overtime be voluntary after the new standard workweek of 40 hours.
5. An employer may not require an employee to work more than 8 hours per day except as pertains to agreed-upon regular schedules as determined in accordance with the Act.
6. For regular schedules beyond 8 hours per day, the following shall apply:
   - Compressed work schedules, flexible worktime arrangements, and regularly scheduled hours averaged over a regular period longer than one week may be adopted by the

employer upon agreement between the employer and the certified bargaining agent or, where a union is not present, by a majority of the workforce affected.

- These schedules may not exceed 12 hours per day. Hours beyond 40 per week (or an average of 40 hours per week in the case of averaged hours) must be paid at the overtime premium rate.
- The use of such schedules shall be registered with the Employment Standards Branch.
- Ministry acknowledgment of the schedule must be posted in the workplace and shall contain information on the provisions of the Act relating to special schedules.
- Overtime work in excess of the daily scheduled hours that have been agreed upon and registered will be voluntary on the part of the employee.

7. The Director may issue a permit authorizing hours of work in excess of the block grant of 250 hours. Although there can be no strict criteria for the granting of permits, some of the criteria to be considered would include layoffs, availability of labour, and skill shortages.

8. The labour union, where present, should be consulted by the Director regarding the granting of permits for excess hours.

9. The issuance of overtime permits should be subject to an appeals procedure by expanding the role of the referee system to make it more responsive to hours-of-work issues.

10. When an application for an overtime permit is made, the union or other recognized employee group should have the right to information regarding hours worked within the establishment. This information should pertain to the group for whom the permit is being sought.

11. When the union suspects a violation of an hours-of-work provision of the Act, it shall have the right to receive from the employer information regarding hours worked by the group for whom the violation is suspected. Information provided must respect the confidentiality of the individual employee. The employer may refer the matter to the Branch should the union request be unreasonable — for example, too detailed or too frequent. Similarly, if the union is unable to obtain the data requested, it may work through the Branch.

12. The Employment Standards Act should be changed to provide for time-off at the premium rate in lieu of overtime pay at the premium rate when both parties are in agreement. Such time-off is to be taken within one calendar year of being earned.

13. An entitlement to unpaid leave should be incorporated into the Employment Standards Act,* as follows:

- universal entitlement to one week unpaid leave each year after 10 years of service with one employer; and
- additional entitlement to unpaid leave beginning 4 years prior to retirement. The entitlement to leave would accrue at the rate of one week per year to a maximum of 4 additional weeks. The 10-year service requirement would also apply to this entitlement. The pre-retirement entitlement would not be available to employees who already have an equal or better provision. This is a one-time entitlement.

14. The standard for vacations with pay should be amended to include 3 weeks of annual vacation after 5 years of service, while retaining the current 2 weeks after one year of service.*

15. The Ministry of Labour should establish a new office or agency to facilitate and consult on innovative worktime arrangements.

16. The provincial government should continue to review its work practices and to promote innovative worktime arrangements for its own workforce, to the extent that these are feasible.

17. The Ontario government should consider raising the issue of working time at a federal-provincial conference as a means of placing the subject on the public policy agenda for the future.

18. The Ministry of Labour should take into consideration long hours of work as a factor when designing or revising occupational health and safety regulations.

19. The Ministry of Labour should initiate a study on the relationship of working long hours to occupational health and safety and to increased exposure to toxic substances.

20. The Ministry of Labour should mount a strong publicity campaign with respect to the Employment Standards Act, with special emphasis placed on the hours-of-work and overtime issues.

21. The Ministry of Labour should require the posting in the workplace of the Employment Standards Act and any permits issued thereunder.

22. The Ministry of Labour should initiate a review of the hours-of-work provisions of the Employment Standards Act on a periodic basis, approximately every 5 years.

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* On Recommendation 13, Ms. Judith Andrew dissents. Her comments are included at the end of Chapter 16.

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* On Recommendation 14, Ms. Judith Andrew dissents. Her comments are included at the end of Chapter 16.

CHAPTER 2

Patterns of Hours of Work and Overtime

Any analysis of hours of work and overtime requires a basic description of the two phenomena. The exercise is complicated however, by the paucity of direct, systematic data, especially on the amount of overtime. The hours-of-work issue is further complicated by the fact that we do not have systematic direct data on hours of work and overtime for *families* as opposed to individual workers.

The use of gross average figures can camouflage many important social and economic trends, including shifts in employment among industries, demographic changes, and changing family work patterns. It is with respect to this last aspect that systematic data on hours of work and overtime are especially lacking. Yet this is where many of the dramatic changes are occurring. For instance, some *families* may average 50 hours of labour market work by having one member work 35 hours and another member work 15 hours per week. Another family may average the same 50 hours by having one member work a standard 40-hour week plus 10 hours of overtime.

In spite of such data problems, which are common to almost any important policy question, a basic picture of the dimensions of the hours-of-work and overtime issue can be drawn from various existing data sources. This chapter draws heavily upon a background research report prepared for the Task Force by Frank Reid, *Hours of Work and Overtime in Ontario: The Dimensions of the Issue* (Reid 1987a), which discusses these sources and provides a more comprehensive picture.

Historical Patterns

Historically, the standard workweek in Canadian manufacturing has declined from 64.0 hours in 1870 to 39.2 hours by 1982 (Reid 1985, p. 149). The largest declines took place immediately after World Wars I and II, with a levelling-off of the decline at around 40 hours occurring in the 1960s and 1970s. During the 1950s, 1960s, and 1970s, however, paid holidays and vacation time increased so that standard weekly hours continued to decline at the historical trend rate of about two hours weekly per decade. In other words, the downward trend in hours of work continued its historical decline but simply changed its form from a declining workweek to increased holiday and vacation time.

What we cannot ascertain from the existing statistics or literature is whether the declining trend in the average workweek (when holiday and vacation time are included) would exhibit that same pattern if *family* hours of work were used as a measure. For example, it is distinctly possible that the average *family* spends more time in the labour market now than in the 1950s, even though *each member* has a shorter workweek or more holiday or vacation time. Even if that were true, the implications for our economic well-being are not clear, since additional time spent in the labour market means somewhat less time spent in household work; hence, total time in labour market *and* household work may change in an ambiguous fashion. What is clear is that the historical changes in the average workweek must be viewed in light of the other ways in which we can reduce our working time, as well as the ways in which family members interact with respect to labour market and household working time.

A rigorous analysis of the reasons for this shift from a reduced workweek to more vacation and holiday time has not been conducted in the literature. Quite possibly, this shift may reflect a combination of a reluctance to reduce the workday below 8 hours (and hence below a 40-hour week) given the fixed money and commute costs associated with getting to work, as well as scheduling problems that may arise if the 40-hour week norm is changed. This shift in the form of the historical decline in working time does remind us that worktime reduction (for example, for the purposes of worksharing) can take various forms, such as earlier retirement, delayed entry into the labour force, intermittent labour force participation, more vacations and paid holidays, and a reduced workday or workweek as well as reduced overtime.

All of these options can also be encouraged through changes in public policy. For example, earlier retirement can be encouraged through reduced public pensions for those who continue to work beyond a certain age or by continuing to permit mandatory retirement. Vacation time and paid holidays can be legislated. Temporary reductions in the workweek can be encouraged by unemployment insurance-assisted worksharing. And overtime obviously can be restricted through various means, such as increases in the overtime premium.

The fact that, historically, working time has changed in all its dimensions reminds us that a policy to encourage worksharing through restrictions on overtime must be viewed in light of these other options for worksharing. Through the interplay of employee and employer preferences — subject to the constraints of public policy, the market, and collective bargaining — these various components of working time have changed historically. Any legislative intervention to encourage a reduction in working time (for example, to encourage worksharing) must consider not only if such a reduction is socially desirable, but also the form in which it should occur. A reduction in overtime is but one form.

Current Patterns of Working Hours

An examination of actual working hours is important because the extent of what is usually defined as overtime hours (in practice, not in legislation) can depend upon the definition of the standard workweek beyond which hours worked are considered overtime, usually subject to an overtime premium. For example, if two establishments (or provinces) had actual workweeks of 44 hours and one defined the standard workweek as 40 and the other as 44, then the former would record 4 hours of overtime and the latter none. Measures of overtime can clearly depend upon definitions, especially the definition of the "standard workweek". This in turn can make it difficult to compare the concept of overtime across jurisdictions and over different time periods, since differences may simply reflect variations in the definition of when overtime commences.

Data on overtime are not meaningless, however, just because what is overtime in one jurisdiction or time period may be regular scheduled worktime in another jurisdiction or time period. The notion of the standard workweek beyond which overtime commences may appropriately be a community norm that can differ by jurisdiction or time period; hence, the definition of overtime will appropriately differ. In such circumstances, however, overtime data should be supplemented by data on actual working time to provide a picture of both. This view is further supported by the fact that in some cases the overtime data do not separate conventional overtime from extra hours, unpaid work, or moonlighting work. For these reasons, data on *actual* hours worked become important to supplement the imperfect *overtime* data and to provide a picture of where the long hours are being worked.

Recent Trend

As Reid (1987a) points out, there is currently tremendous variation in the average workweek in Ontario, with a large number of individuals working part-time (18 per cent worked between one and 29 hours weekly in 1985) and an equally large number averaging more than 44 hours, the standard workweek after which the legislated overtime premium is paid. This variation in hours worked has grown over the years both because of the increase in part-time employment and the increase in the proportion of people who work long hours. Thus, while the "standard" 37.5- or 40-hour week is still the norm, there is substantial and increasing variation about that norm.

An increasing proportion of workers work long hours (over 48, 44, and 40 hours) as presented in Table 2.1. The trend is particularly pronounced if the year 1975 — the year of lowest unemployment — is omitted. For example, between 1976 and 1985 the proportion of persons working over 40 hours increased from 18.8 to 22.6 per cent (a 20 per cent increase), and the proportion working over 48 hours increased from 8.4 to 11.4 per cent (a one-third increase). Despite this increase in the proportion of people working long hours, the average weekly hours actually dropped slightly, reflecting the offsetting effect of the increased proportion of part-time workers.

From the perspective of the Task Force's mandate to review overtime developments, a key observation is that, despite the high unemployment rates, the trend toward long hours continued in the post-1981 period. That is, since 1983 there has been a pronounced growth in the proportion of workers in Ontario working long hours. By 1985, although the average workweek was 36.9 hours, 11.4 per cent of the workforce averaged over 48 hours per week (the cut-off beyond which permits are required) and 17.8 per cent averaged over 44 hours (the cut-off beyond which the legislated overtime premium must be paid).

Table 2.1

Per Cent of Workforce Averaging Short and Long Hours, Ontario, 1975-1985

	Per Cent of Workforce Averaging					
Year	1-29 Hours	Over 40 Hours	Over 44 Hours	Over 48 Hours	Average Weekly Hours	Unemployment Rate (%)
1975	14.8	20.6	15.3	9.0	37.1	5.9
1976	15.9	18.8	14.3	8.4	36.5	6.0
1977	16.1	19.4	14.6	8.8	36.6	6.8
1978	14.9	20.5	15.6	9.4	37.2	6.9
1979	15.3	21.1	16.1	9.9	37.4	6.2
1980	16.0	20.3	15.3	9.6	36.9	6.6
1981	17.1	19.7	14.9	9.3	36.4	6.3
1982	18.0	19.0	14.6	9.3	36.3	9.7
1983	17.9	21.1	16.4	10.6	36.6	10.3
1984	17.6	22.2	17.5	11.1	36.8	8.8
1985	17.5	22.6	17.8	11.4	36.9	7.8

Source: Reid (1987a, Table 5 and appendix tables). The original data source was unpublished tabulations from Statistics Canada's Labour Force Survey.

Pattern by Occupation, Industry, and Sex

There are substantial variations in long hours across occupations and industries, and males are much more likely than females to work long hours (see Table 2.2). Occupations with a long workweek are transportation (operators of planes, trains, ships, subways, buses, and taxis); primary occupations (fishing, farming, forestry, and mining); and the managerial and professional groups. Industries with a long workweek are agriculture; construction; transportation, communications, and utilities; and manufacturing.

A later section of this chapter illustrates that the patterns are generally similar when *overtime* as opposed to long hours is examined, except that primary occupations do not involve much overtime (even though they have long hours) and manufacturing has the highest incidence of overtime. These differences reflect the fact that the scheduled workweek prior to overtime commencing is shorter in manufacturing and somewhat longer in primary jobs. As the last column of Table 2.2 indicates, long hours of work were *often* prevalent in occupations and industries that experienced high unemployment rates. This is particularly the case in transportation, construction, and agriculture. Certainly some groups with long hours experienced relatively low unemployment rates, among them manufacturing and managerial/professional. Nevertheless, for many groups, substantial numbers worked long hours while higher-than-average unemployment persisted in the same occupation or industry.

Regularity of Long Hours

As reported in Reid (1987a), a substantial portion of the workforce reported that their *usual* weekly hours of work were in excess of the 48-hour permit cut-off (8.7 per cent) and the 44-hour overtime premium trigger (18.8 per cent) as specified in Ontario's Employment Standards Act. In fact, more than three-quarters of the workforce who reported such long *actual* hours indicated that they worked those long hours on a regular basis. This suggests that "the vast majority of persons working long hours in Ontario do so on a regular basis rather than as a response to unforeseen emergencies or short-term fluctuations in output" (Reid 1987a), a trend that underscores the growing importance of regular long hours of employment, for some workers, as a feature of the Ontario labour market.

Distribution of Long Hours: Alternative Analysis

The previous analysis focussed on the incidence of long hours; that is, the extent to which workers in a particular occupation or industry were likely to work long hours. This information by itself, however, does not indicate the importance of each occupation or industry in the overall picture. The size of the group as well as its likelihood of working long hours must be considered.

An alternative portrayal of the long-hours situation is seen in Table 2.3, a summary of how the workforce that works long hours is distributed by occupation, industry, and sex. A review of the top panel of the table indicates that, in the occupations, a substantial portion of the work-

Table 2.2

Per Cent Working Long Hours, by Occupation, Industry, and Sex, Ontario, 1985

Group	Per Cent of Workforce Averaging Over 40 Hours	Over 44 Hours	Over 48 Hours	Average Weekly Hours	Unemployment Rate (%)
Occupation					
Managerial/professional	29.5	24.8	17.2	39.3	3.6
Clerical	9.3	5.6	2.6	33.2	7.0
Sales	23.8	20.0	14.9	34.4	7.0
Service	14.6	11.2	7.2	31.7	10.3
Primary	34.7	31.2	23.1	40.8	0.9
Processing	25.5	18.2	8.7	40.1	10.4
Construction	25.9	20.1	13.1	39.8	15.5
Transportation	40.8	34.5	25.2	41.6	9.7
Materials & crafts	19.2	13.3	6.8	36.2	11.4
All occupations	22.6	17.8	11.4	36.9	7.8
Industry					
Agriculture	41.8	41.8	32.5	41.6	19.1
Other primary	—	—	—	41.3	9.4
Manufacturing	25.3	19.0	9.9	39.9	7.3
Construction	31.7	26.7	18.7	39.9	16.3
Transportation, communications, utilities	26.1	16.6	13.9	39.4	5.5
Trade	22.0	16.6	10.7	34.5	7.2
Finance	21.6	17.8	12.7	37.7	5.0
Service	19.5	16.2	11.3	34.2	8.0
Public administration	15.7	10.2	5.8	36.7	5.9
All industries	22.6	17.8	11.4	36.9	7.8
Sex					
Male	30.7	24.8	16.3	40.2	7.7
Female	12.0	8.6	5.0	32.7	8.1
Both	22.6	17.8	11.4	36.9	7.8

Source: Calculations based on data provided in Reid (1987a, Tables 2, 3, 4). The original data source was unpublished data from Statistics Canada's Labour Force Survey.

force that works long hours is in the managerial/professional group. For example, 44.3 per cent of the workforce that works over 48 hours per week is in that group, reflecting the fact that it has a high incidence of long working hours (as documented in Table 2.1) and constitutes almost one-third of the workforce (the last column of Table 2.3). In contrast, the primary and transportation occupations, which also have a high incidence of long working hours, account for only a small portion of the long hours that are worked simply because they involve only a small portion of the workforce. Overall, the bulk of long hours is in the managerial/professional and processing occupations and, to a lesser extent, the sales and service occupations. To a large extent, this situation simply reflects the fact that these are the areas where most employees work, although in the case of the managerial/professional group there is also a very high incidence of long hours.

The middle panel of Table 2.3 indicates that, in the industries, the bulk of long hours is worked in the manufacturing, trade, and service sectors largely because most people are employed in them. The trade and service sectors in fact have an incidence of long hours that is slightly below average (Table 2.2). The other industries that show a high likelihood of having long hours (notably, agriculture; construction; and transportation, communications, and utilities) do not constitute a substantial portion of the long hours worked simply because they do not involve a substantial portion of the workforce.

Proportion of Labour Force Potentially Affected by Legislative Changes

The tabulations of Tables 2.2 and 2.3 can be combined to provide a picture of the potential number of people who could be affected by changes in the hours-of-work provisions of the Employment Standards Act. This total depends not only on the number of persons working long hours but also on whether they are exempt from the whole Act or its hours-of-work and overtime provisions. Workers under federal jurisdiction and students in specified training programs are exempt from the Act. Several parts of the Act (including the hours and overtime provisions) do not apply to teachers, real estate agents, part-time domestic workers, babysitters and companions, Crown employees, travelling salespersons, most professionals and trainees in professions, and most agricultural workers. Also exempt from the hours and overtime provisions are supervisors and managers, firefighters, guides, homeworkers, homemakers, resident building superintendents, domestics and nannies, and residential care workers. Construction workers and embalmers and funeral directors are exempt from the hours but not overtime provisions; taxi drivers, ambulance drivers and helpers, and students working with children are exempt from the overtime but not the hours-of-work provisions. Special regulations govern roadbuilding, local cartage, highway transport, hotels/motels, fresh fruit and vegetable processing, and sewer and watermain construction, generally specifying premium pay after 50 rather than 44 hours per week (60 hours in the case of highway transport).

Unfortunately, it is not possible simply to "subtract" these groups from the various occupations and industries given in Table 2.3 to arrive at a figure for the proportion of the workforce that works long hours and is covered by the hours provisions of the Act. Precise numbers of the exempted workers are not available, nor are specific occupation or industry classifications. Some rough calculations, however, can be made. The exclusion of the managerial/professional group (see the first row of Table 2.3) would eliminate approximately 40 per cent of those who work long hours (38.3 per cent of those who work over 40 hours, 40.9 per cent of those who work over 44 hours, and 44.3 per cent of those who work over 48 hours). The exclusion of the other groups that are not covered or are only partly covered would likely reduce the numbers working long hours to roughly 50 per cent of the original. (This is not 50 per cent of the workforce, but 50 per cent of those who work long hours). More refined estimates could be obtained by doing the calculations separately for each of the different hours groupings, but such an exercise would impart a degree of sophistication to the results that is not merited, given the lack of precise numbers and occupations of the excluded groups.

As indicated previously (see Table 2.2), in 1985 22.6 per cent of the *total* workforce averaged over 40 hours per week, 17.8 per cent averaged over 44 hours, and 11.4 per cent averaged over 48 hours. Assuming that approximately one-half of the workers who work the long hours are covered by the hours-of-work provisions (as discussed previously) suggests that 11.3 per cent (0.50 × 22.6) of the workforce is both covered and averages over 40 hours per week; 8.9 per cent (0.50 × 17.8) is both covered and averages over 44 hours; and 5.7 per cent (0.50 × 11.4) is both covered and averages over 48 hours. These numbers indicate the proportion of the workforce affected by various aspects of the hours-of-work legislation. For example, approximately 5.7 per cent of the workforce is likely to be affected by the statutory maximum hours of 48, beyond which a permit is required (both because they average more than 48 hours and they are covered by the relevant portion of the Act). Approximately 8.9 per cent of the workforce is

Table 2.3

Distribution of Long Hours by Occupation, Industry, and Sex, Ontario, 1985

Group	Per Cent Distribution of Workforce Working Over 40 Hours	Over 44 Hours	Over 48 Hours	All Hours
Occupation				
Managerial/professional	38.3	40.9	44.3	29.3
Clerical	7.7	5.9	4.3	18.7
Sales	9.0	9.6	11.1	8.5
Service	8.1	7.9	8.0	12.6
Primary	3.3	3.8	4.4	2.2
Processing	18.5	16.8	12.5	16.4
Construction	5.3	5.2	5.3	4.6
Transportation	6.1	6.6	7.5	3.4
Materials & crafts	3.7	3.2	2.6	4.3
All occupations	100.0	100.0	100.0	100.0
Industry				
Agriculture	2.5	3.2	3.9	1.5
Other primary	—	—	—	1.3
Manufacturing	28.0	26.7	21.7	24.9
Construction	6.8	7.3	8.0	4.9
Transportation, communications, utilities	8.2	8.3	8.7	7.1
Trade	16.7	15.8	16.5	17.5
Finance	5.8	6.1	6.8	6.1
Service	25.4	26.9	29.4	29.5
Public administration	5.0	4.2	3.7	7.3
All industries	100.0	100.0	100.0	100.0
Sex				
Male	77.1	79.1	81.2	56.5
Female	22.9	20.9	18.8	43.5
Both	100.0	100.0	100.0	100.0

Source: Calculations based on Reid (1987a, Tables 2, 3, 4).

likely to be affected by the standard workweek of 44 hours, at which point the overtime premium commences. Any reduction of the standard workweek to 40 hours would affect about 11.3 per cent of the workforce.

Differences between these figures can also be taken as indicative of the additional numbers of the workforce that could potentially be affected by more stringent legislative requirements. For example, reducing the standard workweek at which point overtime commences from its current level of 44 to a new level of 40 could potentially affect an *additional* 2.4 per cent of the workforce (the difference between the current level of 8.9 per cent of the workforce that is covered and averages over 44 hours, and the 11.3 per cent that is covered and averages over 40 hours). The real impact would depend on the weekly hours after which workers receive premium pay. Similarly, providing the right to refuse overtime at 40 rather than the current 48 hours would encompass an additional 5.6 per cent of the workforce (the difference between the current level of 5.7 per cent of the workforce that is covered and averages over 48 hours, and the 11.3 per cent that is covered and averages over 40 hours). It should be noted that in the data series used here, the percentages reflect one point in time each month, averaged over the year. Thus, the same persons may not be working longer hours in each period. Almost any employer might be affected at some point during a year by requiring someone to work in excess of 40 hours. Finally, these figures are likely to be maximum estimates of the increase in the proportion of the workforce that would be affected by the more stringent standards because the extent of long hours would likely be reduced somewhat by the introduction of such standards. As well, these numbers do not reflect noncompliance — an issue that will be dealt with subsequently.

Patterns of Overtime Hours

The preceding discussion focussed on actual and usual hours worked, which were used to construct a picture of persons who work long hours in Ontario. Data pertaining to *overtime* actually worked are also available from Statistics Canada's Labour Force Survey. The overtime hours, however, are not distinguished from extra hours worked (for example, they could include extra hours worked by a part-timer); they include unpaid as well as paid work; and they relate to all jobs rather than the main job only. For these reasons, such data may not provide an accurate picture of pure overtime to paid employees in their main job. Nevertheless, they do provide a picture of the sum of overtime and extra hours worked (with overtime likely being an important component and highly correlated to extra hours). The Labour Force series also likely provides an accurate portrayal of *changes* in overtime worked over different time periods.

This time pattern is presented in Table 2.4. In 1985, about 13 per cent of the workforce in Ontario was working overtime or extra hours during the survey week. The average duration of overtime or extra hours worked for those who worked the overtime hours was a substantial 8.3 hours per week. Because most persons did not work any overtime or extra hours, however, this translates into an average of about one hour of overtime per week over the entire workforce.

This *average* is low because most people work no overtime; those who do, however, work substantial amounts of overtime. And here lies one reason for the differences in the perception of the amount of overtime worked. Some may report an average overtime figure for all employees including the majority who work no overtime; others may report an average only among those who work the overtime. Other discrepancies can arise depending upon whether overtime is reported as commencing after the legislated standard workweek of 44 hours or after a scheduled workweek (for example of 40 hours) defined by a collective agreement or company personnel policy.

Table 2.4 also indicates that both the incidence of overtime (that is, the proportion of people working overtime) and the duration of overtime for those who worked overtime have increased since 1975. This increase has occurred in spite of the general rise in the unemployment rate, seen in the last column of Table 2.4. There appears to be some sensitivity of overtime to the business cycle; average overtime decreased as the economy went into the recession of 1982-83 and it increased as the economy came out of that recession. Nevertheless, that cyclical sensitivity appears to be dominated by a structural change in the underlying relationship as, in recent years, the amount of overtime independent of the level of employment appears to have increased at each level of unemployment. The extensive overtime in the post-1982 period appears to be the result of both an expanding economy and more extensive use of overtime independent of the state of the economy. It seems then that overtime, in recent years at least, is not mainly a cyclical phenomenon that will disappear when the economy slows down. It is persisting even in periods of substantial unemployment. It is this emergence of overtime, which appears to be scheduled on a regular basis, that has prompted the policy concern.

As indicated in Reid (1987a), the patterns of overtime and extra hours worked (based on both Statistics Canada's Labour Force Survey and an alternative data source — the Statistics Canada's Survey of Employment, Payrolls and Hours for

Table 2.4

Overtime or Extra Hours, Employed Paid Workers, Ontario, 1975-1985, Labour Force Survey Data

Year	Employment	Number Working Overtime	Incidence of Overtime[a]	Average Duration of Overtime[b]	Average Overtime Hours[c]	Unemployment Rate
	thousands	thousands	per cent	hours per week		per cent
1975	3,277.7	378.9	11.6	8.0	0.92	5.9
1976	3,311.3	353.7	10.6	8.1	0.86	6.0
1977	3,372.5	368.5	10.9	8.2	0.90	6.8
1978	3,473.1	397.1	11.4	8.1	0.93	6.9
1979	3,621.3	427.9	11.8	8.1	0.96	6.2
1980	3,691.2	427.5	11.6	8.0	0.93	6.6
1981	3,806.9	454.3	11.9	8.1	0.97	6.3
1982	3,706.7	400.6	10.8	8.1	0.88	9.7
1983	3,727.3	440.0	11.8	8.1	0.96	10.3
1984	3,859.6	488.0	12.6	8.2	1.04	8.8
1985	4,003.1	518.0	12.9	8.3	1.07	7.8

[a] Incidence of overtime is defined as the number working overtime as a per cent of employment.

[b] Average duration of overtime is defined as the average weekly hours of overtime per person who worked overtime.

[c] Average overtime hours is the average weekly hours of overtime per person employed. It is calculated as a product of the incidence and the average duration of overtime.

Source: Reid (1987a, Table 7). The original data source was unpublished data from Statistics Canada's Labour Force Survey.

hourly paid employees) are generally similar to the previously discussed patterns for long hours worked. Notable exceptions are the primary occupations, which involve long hours but below-average overtime (presumably reflecting a long scheduled workweek before overtime or extra hours apply) and the manufacturing industry, which has the highest incidence of overtime but is about average in the extent of long hours (presumably reflecting a shorter scheduled workweek before overtime commences).

SUMMARY OF PATTERNS

- *Historically, the standard workweek in Canadian manufacturing has declined from 64 hours in 1870 to about 39 hours today, with the average in all industries being about 37 hours. The largest declines occurred after World Wars I and II. Although the workweek levelled off at around 40 hours in the post-World War II period, the decline in working time continued in the form of paid holidays and vacation time.*
- *Currently, there is substantial variation in the average workweek in Ontario, with almost 40 per cent of the workforce equally divided between part-time work and a long workweek averaging over 44 hours.*
- *This variation has increased over time because of the growth of both part-time work and long hours.*
- *There is some cyclical variability, with long hours and overtime being more prominent in periods of expansion. Since 1975, however, both the proportion of the workforce working long hours and the amount of overtime have increased steadily despite the rising unemployment over that period, with the change being most dramatic since 1982.*
- *The current high levels of overtime appear to reflect a combination of the expanding economy (coming out of the 1982-83 recession) and a substantial increase in the amount of overtime independent of the state of the economy. There appears to be a structural change that is inducing the high levels of overtime in the 1980s.*
- *Currently about 11 per cent of the Ontario workforce averages over 48 hours, the statutory maximum after which permits are required. Approximately 18 per cent averages over 44 hours, the standard workweek after which the statutory overtime premium commences. Approximately 23 per cent averages over 40 hours.*
- *The great majority (about 70 per cent) of those who work long hours (over 44 hours per week) do so on a regular basis rather than in response to seasonal, cyclical, or other temporary fluctuations in output.*
- *Only about half of these workers who work long hours are covered by the hours-of-work and overtime provisions of the Employment Standards Act, largely because of the exclusion from coverage of managers and professionals. Thus, the proportion of the workforce that is affected by the current legislative requirements is approximately 9 per cent for requirements after 44 hours (for example, overtime premium) and 6 per cent for requirements after 48 hours (for example, permits).*
- *More stringent legislation to apply at 40 hours would affect about 11 per cent of the Ontario workforce. This is not an* additional *11 per cent of the workforce, since already 9 per cent are affected by requirements after 44 hours and 6 per cent by requirements after 48 hours.* A change in *the requirements from 44 to 40 hours (for example, for the overtime premium) would, however, affect an* additional *2 to 3 per cent of the workforce, and a change from 48 to 40 hours (for example, for the individual right to refuse) would affect an* additional *5 to 6 per cent of the workforce.*
- *Occupational groups with a long workweek are professional/managerial; transportation; and primary occupations (fishing, farming, forestry, and mining). Industry groups with a long workweek are agriculture; construction; transportation, communications, and utilities; and manufacturing. The patterns are similar for overtime hours, except that primary occupations do not have much overtime despite their long hours, and manufacturing has the highest incidence of overtime despite having an average proportion of workers working long hours. These differences reflect the fact that primary occupations have a longer standard workweek after which overtime commences, and manufacturing has a shorter standard workweek.*
- *Although they work long hours, employees in the transportation and primary* occupations *do not constitute the bulk of long hours. This is so simply because they do not have a large workforce. The bulk of long hours is worked by managerial and professional groups (usually not covered by the hours and overtime provisions of the Act), in processing occupations and, to a lesser extent, in sales and service jobs (in part because most employees work in such jobs). Similarly, the preponderance of long hours worked in the manufacturing, trade, and service* industries *is in large part because they constitute the bulk of employment.*
- *On average, about one hour of overtime or extra hours per week is worked by the total Ontario workforce. Such overtime, however, is not evenly distributed across the workforce. About 87 per cent work no overtime, while 13 per cent average about 8 hours of overtime per week.*

CHAPTER 3

Evolution of Ontario's Legislation on Hours of Work and Overtime

The current legislation on hours of work and overtime in Ontario has its roots in a remarkably infrequent number of legislative enactments as well as a number of minor modifications in the evolution and administrative practice of that legislation. In providing information on the origins and evolution of the current legislation, this chapter draws heavily upon the background report prepared for the Task Force by John Kinley: *Evolution of Legislated Standards on Hours of Work in Ontario*.

To focus the discussion, we deal with the establishment and evolution of the various design features of the current legislation that could be changed to alter how the legislation affects hours of work and overtime. The main design features are:

- the weekly hours limit or trigger after which an overtime premium must be paid (currently 44);
- the overtime premium (currently time-and-one-half);
- the maximum hours beyond which people are not allowed to work, except under special circumstances or with a permit (currently 8 per day and 48 per week);
- the permit system, whereby permission may be granted to work beyond the maximum-hours limits (currently there are 3 types of excess-hours permits: 100-hour permits, special permits, industry permits).
- other conditions deemed appropriate for exceeding maximum hours (currently emergency overtime, and regular longer hours as part of an approved flexible work schedule);
- the individual right to refuse overtime (currently after 8 hours per day and 48 hours per week);
- weekly averaging provisions, which exempt employers from the maximum-hours requirement and allow them to average regularly scheduled approved workweeks for purposes of paying the overtime premium;
- allowance of compensatory time-off in lieu of an overtime premium (currently no provision in the legislation);
- exemptions from the various provisions (currently numerous exemptions);
- public holidays (currently 7 per year);
- paid vacation (currently 2 weeks after one year, annually).

These various design features are interrelated, from a policy perspective, and they are sometimes interchangeable. For example, if there is a political desire to reduce hours of work (say, for worksharing purposes), this aim could be achieved by any combination of the following:

- reducing the overtime hours limit;
- increasing the overtime premium;
- reducing the maximum hours beyond which a permit or special circumstances are required;
- tightening up the granting of permits;
- restricting the other allowable conditions for exceeding maximum hours;
- granting the individual right to refuse at an earlier point;
- not allowing averaging provisions;
- allowing compensatory time-off in lieu of an overtime premium;
- reducing the number of exemptions;
- increasing the number of public holidays; and
- increasing the number of paid vacations.

In view of the mandate of the Task Force to consider ways of reducing long hours of work so as to create new jobs, a key policy question then becomes: what combination of design features should be changed in order to regulate hours of work appropriately? New job-creation could also be examined in the context of other policies to facilitate worksharing in the broadest sense (for example, delayed school-leaving, unpaid leaves, unemployment insurance-assisted worksharing, and mandatory retirement) as well as other policies to create jobs and hence minimize the need for worksharing. But before we address the matter of the appropriate combination of design features that can help reduce hours of work, it is worth reviewing how such features evolved in the first place.

Factories Act of 1884: 10 and 60

Government regulation on hours of work in Ontario began with the Ontario Factories Act of 1884. Coverage was basically limited to factories and later to shops and mines. The legislation was motivated by concerns over "protecting" the health and safety of women and youths; hence, coverage was limited only to these groups. The early legislation generally specified a maximum of 10 hours per day and 60 hours per week, which was fairly typical of average working hours at that time.

The fact that the legislative maximum was close to the average hours of work gives the appearance that the legislation provided more than a minimum safety net; that is, it appeared to be *equal* to the prevailing community norm rather than providing a floor or safety net for that norm. Restricting the coverage to women and youths, however, who were perceived to be in need of more protection than what was provided in the average situation, effectively provided a safety net for those groups. That is, the average hours of work at that time for all persons was deemed to be the maximum tolerable number for women and youths. Obviously, even that safety net was allowed to deteriorate over time since the maximum hours of 10 per day and 60 per week did not change until 1944, despite the fact that average hours per week declined regularly throughout that period.

The early legislation also included some restrictions against night work for women and youths as well as requiring specific allotments for meal times. It also required that the hours provisions be posted in a conspicuous place.

Hours of Work and Vacations with Pay Act of 1944: 8 and 48

The next major phase of intervention occurred with the Hours of Work and Vacations with Pay Act of 1944. That legislation reduced the maximum hours of work from 10 per day and 60 per week to 8 per day and 48 per week. It also introduced the statutory requirement of vacation with pay, mandating one week annual paid vacation after one year of employment, a requirement that already was common practice — and often was exceeded — in private industry. Most importantly, coverage was expanded significantly, beyond women and children, to include most employees and most sectors. Initially, the only groups that were not covered or were exempt were Crown employees, employees under federal jurisdiction, managers and supervisors, and employees in war industries.

The new legislation was motivated less by a desire to protect the health and safety of women and children, and more by a desire to share the work among the returning troops and to provide a minimum standard or safety net for all workers, including those who had little individual or collective bargaining power. This was reflected in the broader coverage of the legislation to the majority of the workforce. The sustained prosperity after the war led to a reduction in the need for worksharing, however, so that the rationale for the legislation tended to focus on the safety net for the unprotected.

The new legislation potentially affected a substantial portion of the workforce both because of the extensive coverage and because the statutory *maximum* hours of 8 and 48 were fairly close to the *average* hours. In fact, in 1942-43, just prior to the legislation, about 60 per cent of the covered male workforce and 50 per cent of the covered female workforce averaged more than 48 hours per week, suggesting that greater than half the workforce would be constrained by the maximum-hours provisions. The effect would be particularly stringent since the statutory limit was a maximum beyond which people could not work; it was not simply a statutory workweek beyond which employees could not work unless paid some overtime premium. The standard was an absolute prohibition, not a standard that could be exceeded at some specified penalty.

Not surprisingly, given the potential stringency of such a legislative enactment that would have affected more than half the workforce, attempts were made to provide flexibility through a variety of ways, many of which have continued to this day. First, the maximum-hours prohibition was to exclude excess hours worked because of an accident, urgent repairs, or an emergency work required to be done to machinery or plant, a practice still in effect. Second, in cases where it was not "feasible" to apply the maximum, excess hours were permitted where the employers and employees agreed and the administrator approved longer hours; this arrangement was terminated in 1968. Third, the legislation gave the administrator the discretion to approve work schedules exceeding a regular 8-hour day where longer hours were the "custom"; this discretion was limited to a maximum of 12 hours per day in 1974, a practice that continues. Fourth, flexibility was to be obtained by allowing numerous exemptions from the hours-of-work and overtime provisions. Some exemptions were written into the statute, others were provided through regulations. Current exempt groups, many for whom exemptions were established in 1945, include professionals; persons engaged in farming, commercial fishing, firefighting, funeral directing and embalming, domestic service, or the growing of flowers, fruit, and vegetables; and persons employed as fishing and hunting guides, live-in caretakers, or police. Taxi drivers and ambulance drivers and their helpers are covered by hours provisions but are exempt from the overtime pay provisions.

Fifth, and most significant, flexibility was to be attained by the establishment of an elaborate permit system. An *annual permit* of 120 hours per year was automatically granted upon request, to remain in place unless revoked by the administrator. This was reduced to 100 hours in 1945 and remains at that level today. (In effect, this adds an average of 2 hours per week to the 48-hour maximum.) Twelve hours per week in excess of the 48-hour maximum were allowed for maintenance and other designated workers, a practice that continues. And all workers were given the right to refuse overtime work after 8 and 48 hours, a right that remains in effect today. A number of *industry permits* were also established that granted "excess hours" beyond the statutory maximum to certain industries (26 today) having unusual hours-of-work requirements. *Special permits* could also be granted by the administrator when the "nature of the work" or the "perishable nature of the raw material being processed" required excess hours. Arrangements for such special permits, which expire at the end of each calendar year, continue today.

Clearly, the greater stringency of the vastly extended coverage and the more stringent maximums at 8 hours per day and 48 per week were offset, in part at least, by greater flexibility through extensive exemptions and by downplaying the 8-hour-per-day maximum where longer hours were the custom. Thus, some of what the legislation gave with one hand was taken away by the other.

Employment Standards Act of 1968: Time-and-One-Half

The next major change occurred in 1968, when the new Employment Standards Act consolidated the previous hours-of-work legislation along with other employment standards such as minimum wages and equal pay. At this time, the Government introduced a legislated overtime premium pay of time-and-one-half on work after 48 hours per week and on 7 public holidays. In effect, the legislation introduced the notion of a penalty tax to supplement the regulatory system that prohibited weekly hours beyond 48, albeit subject to numerous exemptions and special considerations. Further flexibility was attained by exempting hours-averaging agreements and by allowing the 8-hour day to be exceeded, both with the approval of the administrator. No overtime premium was required on a daily basis — only on a weekly one. This requirement continues in today's legislation.

Post-1968: Minor Modifications

Subsequent to the 1968 consolidation of the hours-of-work and other provisions in the Employment Standards Act, a number of minor modifications to the hours-of-work legislation have occurred. As of 1974, the overtime premium was to commence after 44 not 48 hours per week, and the premium rate for holidays was introduced at regular pay plus time-and-one-half the regular rate for hours worked. Also in 1974, the discretion of the administration to approve a regular workday in excess of 8 hours was limited to a 12-hour day. Annual vacations with pay were introduced as follows: 1 week after the first year (1 after 1) in 1944; 1 after 1, 2 after 3 in 1966; 1 after 1, 2 after 2 in 1970; and 2 after 1 effective in 1974. In 1974, 4 paid public holidays were introduced, and in 1975 this was increased to 7. Since 1975, the hours-of-work and paid time-off provisions of the legislation have not changed.

SUMMARY OF EVOLUTION

The main features of the evolution of the hours-of-work and overtime legislation can be summarized as follows:

1) *1884 Factories Act*
    a) *maximum of 10 hours per day and 60 per week;*
    b) *coverage limited to women and youths.*
2) *1944 Hours of Work and Vacations with Pay Act*
    a) *maximum of 8 hours per day and 48 per week;*
    b) *potential coverage of more than half the workforce;*
    c) *flexibility through various exceptions, especially through an elaborate permit system.*
3) *1968 Employment Standards Act*
    a) *time-and-one-half premium after 48 hours and for 7 public holidays, if worked. If not worked, the holidays were unpaid at that time.*
4) *Post-1968*
    a) *time-and-one-half premium after 44 hours (1974);*
    b) *4 paid public holidays in 1974, increased to 7 in 1975 (i.e., the previous unpaid holidays were converted to paid holidays);*
    c) *2.5 regular pay (i.e., holiday pay plus 1.5 regular pay) for 7 public holidays, if worked (1974-75);*
    d) *annual vacation with pay increased ultimately to 2 weeks after 1 year (1974);*
    e) *no changes since 1975.*

Perhaps the most noticeable characteristics of this evolution are:

- *its occurrence in discrete phases, notably 1884, 1944, and to a lesser extent, 1968;*
- *its shift in orientation from "protecting" women and youths to providing a safety net for those with*

limited bargaining power;

- *the reduced emphasis on the worksharing rationale when prosperity returned after World War II, a rationale that has resurfaced today following the deep recession of 1982-83 and the industrial restructuring of recent years;*
- *the flexibility that was attained through numerous exemptions, when coverage became potentially substantial;*
- *the fact that in more recent years policy initiatives to reduce hours have occurred in the form of the overtime premium (1968) and statutory paid holidays (effective in 1974 and 1975) rather than through a lowering of the statutory ceilings; and*
- *the fact that no changes have occurred since 1975.*

CHAPTER 4

Exemptions, Special Overtime Provisions, and Permits

The evolution of Ontario's hours-of-work and overtime legislation — especially the extended coverage of the 1944 changes — has led to a complicated set of exemptions and special regulations under the current system. In describing the current system, this chapter draws on three sources: the background report prepared for the Task Force by John Kinley, *Current Administration of Legislated Standards on Hours of Work in Ontario*; background information provided by the Employment Standards Branch of the Ministry of Labour; and the Branch's study: *Excess Hours "Special" Permits Issued for 1983 under the Employment Standards Act.*

The various exemptions and special considerations can be categorized as:

1. Exclusions from the Act:
    a) workers under federal jurisdiction;
    b) students or inmates in special programs.
2. Exemption from *all* of the hours, overtime, public holiday, and vacation provisions:
    a) Crown employees;
    b) professionals, including teachers;
    c) individuals involved in commercial fishing;
    d) part-time domestic service workers, babysitters and companions;
    e) many salespersons;
    f) most agricultural workers.
3. Exemptions from *specific* hours, overtime, public holiday, and vacation provisions (usually exempting the groups from the hours-of-work and overtime provisions, and often from the public holiday provisions):
    a) supervisors and managers;
    b) construction workers;
    c) firefighters;
    d) resident building superintendents;
    e) domestics and nannies;
    f) members of some 13 other groups.
4. Special *overtime* provisions, allowing overtime and the overtime premium to commence usually after 50-60 hours rather than 44 hours.
5. Permits to exceed maximum hours (3 types).

A detailed breakdown of these five groups is given, respectively, in Tables 4.1-4.5. (The permit system is outlined in greater detail in a later section of this chapter.)

Exclusions and Exemptions

The exemptions basically arose in response to a desire to provide flexibility in the face of what otherwise would have been a uniform standard applied to dissimilar work environments. The potential problem of applying a uniform standard was foreseen at the time of the 1944 legislation, which otherwise would have affected more than half the workforce with its extensive coverage. Hence, exemptions were written into the statute, regulatory authority was provided for the making of additional exemptions, and discretion was given to the authorities administering the legislation.

While documentary evidence on the original rationale for the exemptions is not available, the following factors appear to have been important:

- the inevitable variability in hours arising from such factors as weather, seasons, emergencies, or market fluctuations;
- the high cost to employers from the loss of flexibility in scheduling their hours;
- the difficulty of establishing or measuring regular hours;
- the absence of a need to provide a safety net of protection to groups having sufficient bargaining power or covered by other legislation;
- the reluctance of managerial, professional, and skilled groups to have their hours of work regulated;
- the potential for inequity in an industry or occupation having a high proportion of self-employed individuals (if standards applied only to the employed segment);
- the ability of groups to gain an exemption through the political process.

Table 4.1

Employment Standards Act Exclusions from Complete Act

Excluded	Reference
Worker under federal jurisdiction	Canada Labour Code, s. 2
Secondary school student in work experience program	Reg. 285, s. 2(1)
Person in program approved by community college or university	Reg. 285, s. 2(1)
Inmate in rehabilitation program	Reg. 285, s. 2(1)
Offender working under an order of the court	Reg. 285, s. 2(1)

Table 4.2

Employment Standards Act Exemptions from *All* the Hours-of-Work, Overtime, Public Holiday, and Vacation-with-Pay Provisions

Exempted	Reference
Crown employee[a]	s. 21
Duly qualified practitioner of:	
architecture	Reg. 285, s. 3
chiropody	
dentistry	
law	
medicine	
optometry	
pharmacy	
professional engineering	
psychology	
public accounting	
surveying	
veterinary science	
Registered drugless practitioner	Reg. 285, s. 3
Teacher	Reg. 285, s. 3
Student in training for above professions	Reg. 285, s. 3
Person employed in commercial fishing	Reg. 285, s. 3
Part-time domestic servant, sitter, companion[b]	Reg. 285, s. 3
Registered real estate salesperson	Reg. 285, s. 3
Travelling salesperson on commission	Reg. 285, s. 3
Most farmworkers[c]	Reg. 285, s. 3

[a] Also exempt from other provisions.

[b] A domestic servant working 24 hours per week or less in the household, or as a babysitter or companion for the aged or infirm.

[c] Farmworker whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, and poultry. Fruit, vegetable, and tobacco harvesters, under Reg. 284, are exempt from the hours-of-work and overtime provisions but not from the public holiday and vacation-with-pay provisions, provided they have been employed in harvesting by the employer for 13 weeks or more.

Table 4.3

Employment Standards Act Exemptions from *Specific* Hours-of-Work, Overtime, Public Holiday, or Vacation-with-Pay Provisions (Under Reg. 285, ss. 4, 6, 7, 8, Unless Otherwise Designated)

	Exemption from Particular Part Denoted by X			
Group	Part IV Hours of Work	Part VI Overtime Premium	Part VII Public Holiday	Part VIII Vacation with Pay
Firefighters	X	X	X	
Supervisors or managers	X	X		
Fishing or hunting guides	X	X	X	
Construction workers	X		X[a]	
Gardening employees[b]	X	X	X	
Homeworkers	X	X	X	
Resident building caretakers	X	X	X	
Embalmers or funeral directors	X			
Students working with children		X	X	
Taxi cab drivers		X	X	
Seasonal motel workers, etc.		X[c]	X	
Trainees in health courses				X
Ambulance service workers		X		
Domestics and nannies (Reg. 283)[d]	X	X		
Fruit, vegetable, and tobacco harvesters (Reg. 284)	X	X		
Homemakers[e] (Reg. 285, s. 14)	X	X		
Residential care workers[f] (Reg. 440/82)	X	X		
Industrial standards workers covered by s. 17 of the Act[g]	X			

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[a] Construction workers who receive 7 per cent or more of their wages for vacation pay or holiday pay are exempt from Part VII.

[b] Landscape gardening; growing of mushrooms, flowers, trees, and shrubs; growing, transportation, and laying of sod; breeding and boarding of horses; keeping of fur-bearing animals.

[c] Seasonal employees in a hotel, motel, tourist resort, restaurant, or tavern who are provided with room and board have a special overtime provision (Reg. 285, s. 17) requiring overtime after 50 hours.

[d] Covered under Reg. 283, which exempts them from the hours-of-work and overtime provisions but requires one free period of 36 consecutive hours and one of 12 consecutive hours per week for live-ins. Live-out domestics receive $6.53 per hour for each hour worked in excess of 44 per week. Other special arrangements are detailed in the regulations.

[e] Person employed by persons other than a householder to perform homemaking services in household.

[f] Supervises and cares for children or handicapped in residential dwelling. Has special regulations.

[g] Ontario Industrial Standards Act, s. 22(2); where a schedule under this Act prescribes rates of wages, vacations with pay, or hours of labour that are different from those prescribed by or under any Act referred to in subsection (1), the greater rate of wages and vacations with pay and the lesser hours of labour shall prevail.

Table 4.4

Employment Standards Act: Special *Overtime* Provisions Under Reg. 285, ss. 16, 17

Industry/Occupation	Trigger for Overtime Premium
Road building — streets, highways, parking lots	55 hours
Road building — bridges, tunnels, retaining walls	50 hours
Local cartage	50 hours
Carriers licensed under the Public Commercial Vehicles Act	60 hours
Seasonal workers in hotels, motels, restaurants, etc., with room and board	50 hours
Seasonal fresh fruit and vegetable processing	50 hours
Sewer and watermain construction	50 hours

Table 4.5

Employment Standards Act: Permits for Excess Hours

Type	Requirement	Reference
Annual permit of 100 hours for each employee[*]	Application to Director	s. 20(1)
Special permit	If required by the work or the perishable nature of raw material	s. 20(2)
Industry permit (26 industries)	Application to Director	s. 20(1) or s. 20(2)

[*] Except 12 hours in each week for each employee in designated occupations; includes engineer, firefighter, maintenance worker, receiver, shipper, delivery truck driver, watch guard.

Table 4.6

Paid Workers Exempt from the Hours-of-Work and Overtime Provisions of the Employment Standards Act, Ontario, 1986

Class of Employee	Hours-of-Work Provision	Overtime Pay Provision
	thousands of employees	
Construction workers	178	not exempt
Supervisors and managers	150	150
Teachers	106	106
Duly qualified professionals	83	83
Crown employees	76	76
Commission salespersons	63	63
Agricultural workers	54	54
Domestics and nannies[a]	50	50
Students and trainees in programs	35	65
Real estate salespersons	34	34
Live-in building caretakers	20	20
Firefighters	9	9
Drugless practitioners	3	3
Residential care workers	2	2
Embalmers and funeral directors	2	not exempt
Homemakers	1	1
Commercial fishing	*	*
Fishing and hunting guides	*	*
Homeworkers	*	*
Taxi cab drivers	not exempt	7
Ambulance drivers and helpers	not exempt	4
Total exempt from hours and overtime	866	728
Covered by Act[b]	3,500	3,500
Per cent exempt from hours and overtime	24.8	20.8

Note: Totals may not equal sum of individual items due to rounding.
* Denotes less than 1,000 employees.

[a] Although domestics and nannies are exempt from the general overtime pay provisions, those who live out (excluding babysitters, companions, and part-time domestics) are entitled to a special entitlement of 1.5 times the minimum wage for each hour worked in excess of 44 per week. Although there is no reliable information on numbers involved, as many as 10,000 employees may fall under the special provision.

[b] Excludes owners, proprietors, self-employed, unpaid volunteers, unpaid family workers, and workers under federal jurisdiction.

Source: Information provided by the Employment Standards Branch of the Ontario Ministry of Labour. In some instances there were no reliable sources of information, and estimates were derived internally on the basis of previous work. Such "best guesses" apply to students in recreational programs operated by charitable organizations, students instructing or supervising children, domestics, persons whose only work is supervisory or managerial in character, homeworkers, and live-in apartment superintendents.

Table 4.7

Excess-Hours Permits Issued Since 1960

Fiscal Year	100-Hour Permits	Special Permits Number	Special Permits Hours
1960-61	979	115	—
1961-62	993	128	—
1962-63	1,193	218	—
1963-64	1,480	266	—
1964-65	1,868	504	—
1965-66	2,582	663	—
1966-67	2,625	714	—
1967-68	2,542	687	—
1968-69	4,258	853	—
1969-70	1,500	889	—
1970-71	718	446	—
1971-72	405	409	—
1972-73	799	1,138	—
1973-74	405	726	—
1974-75	241	646	—
1975-76	301	383	—
1976-77	244	407	—
1977-78	247	449	—
1978-79	219	408	—
1979-80	265	267	—
1980-81	229	263	—
1981-82	211	293	357,960
1982-83	180	163	239,305
1983-84	294	274	875,950
1984-85	374	309	1,205,545
1985-86	435	161	956,280

Source: Annual reports of the Ontario Ministry of Labour.

Table 4.8

Workers Covered by 26 Industry Permits, Ontario, 1986

Industry[a]	Employees in Industry[b]	12-Hour Per Week Permit[c]	100-Hour Per Year Permit[d]	Other Special Exemptions[e]
Retail stores	402,000	8	all	none
Hotel, motel, resort, restaurant, & tavern	225,000	12	all	as required — seasonal[f]
Highway transport	40,000	10	all	none
Local cartage		8	all	none
Automatic car wash		9	all	none
Auto repair & gas station	24,000	10	all	none
Mining	22,000	12	all	none
Lumber & building supply	21,000	9	all	none
Contract caretaking	20,000	9	all	none
Interurban & municipal transportation	17,000	8	all	none
Baking	15,000	8	all	250 yearly — 5 categories
Logging–	14,000	13	all	as required — 2 categories
Sawmill		10	all	as required — 3 categories
Milk products	9,000	8	all	250 yearly — all production
Laundry or drycleaning	9,000	8	all	none
Fruit & vegetable processing	8,000	6[g]	all	as required — 3 categories
Heating	8,000	9	all	none
Carbonated beverage	7,000	8	all	none
Taxi	6,000	8	all	as required — 1 category
Ambulance service	4,000	8	all	as required — 3 categories
Crushed stone, quarry, & sand & gravel	4,000	0	office	as required — nonoffice
Ready-mix concrete plant	3,000	0	office	as required — nonoffice
Concrete block manufacturing	2,000	0	office	as required — nonoffice
Marina	2,000	8[h]	all[g]	as required — all[h]
Camps for children	2,000	8	all	as required — all
Surface & contract diamond drilling	*	8	all	as required — all jobsites
Asphalt paving-mix plant	*	0	office	as required — nonoffice
Total	865,000			

Note: Total may not equal sum of individual items due to rounding.
* Denotes less than 1,000 employees.

[a] Ranked in descending order, by number of employees.

[b] Not all employees will actually work the overtime hours granted by the permits; therefore, this entry is a maximum number who may work those hours.

[c] Number in column refers to the number of "special categories of employees" for which the 12 hours per week of "excess hours" are permitted.

[d] Entry in column refers to the employees for whom the 100-hour per year permit applies; basically, these are all other employees who are not covered under the 12-hour per week permit for "specified categories in employees."

[e] Entry in column refers to the additional "excess hours" allowed and the groups for which the hours are allowed.

[f] Head chef, head housekeeper, and maître d'hotel are exempt.

[g] For the season October 1 to April 30, only for three of the "specified categories of employees"; from May 1 to September 30, 12 hours weekly for those three categories of employees.

[h] From December 1 to March 31, only the normal allowance of 12 hours per week for the eight "specified categories of employees" and 100 hours are allowed; in the rest of the season, hours as required are allowed for all employees.

Source: Information provided by the Employment Standards Branch of the Ontario Ministry of Labour, correspondence dated September 11, 1986.

Basically, the exemptions appeared to "be there for the asking." All that was needed to ensure an exemption was some effective interest group representation and a reasonable rationale for flexibility. Hence, the proliferation of exemptions.

A number of points stand out with respect to the array of exemptions and special provisions:

- The exemptions are extensive.
- The complete picture of exemptions is difficult to piece together from the Act itself, since the exemptions appear in so many different sections.
- Further confusion is added by the use of categories that are not common nomenclature, are not clearly distinguished from similar-sounding categories, or are vague: drugless practitioner; homeworker and homemaker; domestic servants and domestics and nannies; workers under the Industrial Standards Act. (Presumably, people in these categories know their relevant portion of the Act; nevertheless, it is difficult for others to determine coverage.)
- In most circumstances, the rationale for the particular form of the exemption seems clear. In other areas, certain discrepancies exist that raise questions: If an overtime premium is mandated for construction workers, why not also for other groups (for example, gardeners)? Why are many groups not given overtime pay for work during public holidays, while other groups are provided with overtime pay? Why are trainees in health courses not given vacations with pay while other trainees do receive such a benefit? And why does overtime for roadbuilding start at 55 hours when it relates to streets, but at 50 hours when it involves tunnels?
- The numerous exemptions suggest that no rationale for discouraging overtime is sacrosanct; that is, the rationales for discouraging overtime are allowed to be traded off against other social objectives. For example, when students in training programs are exempted from the various hours provisions, it appears that the desire to protect the health and safety of workers is allowed to be traded off against the objective of acquiring training. The need to provide a safety net for workers having little bargaining power seems to be bypassed when it proves difficult to monitor hours worked, as is the case with live-in domestics or farmworkers. And presumably, when many seasonal workers are exempt from the maximum-hours-of-work provisions, the desire to encourage worksharing is bypassed for cost considerations and to enable these workers to acquire sufficient income over a shorter season. This is not to suggest that the exemptions are wrong; rather, it highlights the point that legitimate competing social objectives are involved.

Although precise numbers in each of the exempt categories are difficult to establish, we can provide estimates of the number of paid workers who are likely to be exempt from the hours-of-work and overtime pay provisions. The estimates in Table 4.6 are listed in descending order of importance, based on exemption for the hours-of-work provisions. In total, about 850,000 to 900,000 employees in Ontario are exempt from the hours-of-work provisions of the Act, and about 700,000 to 750,000 are exempt from the overtime pay provisions. These figures, respectively, represent about 25 and 20 per cent of the paid workforce that otherwise is covered by the Act. Slightly more than two-thirds of the hours-of-work exemptions come from five groups: construction; supervisors and managers; teachers; professionals; and Crown employees.

The exemption from the hours-of-work provisions of the Act means not only that special permission (for example, through permits) is not required for individuals to work beyond the 48-hour maximum, but also that workers do not have the individual right to refuse such long hours. The only other conditions whereby the right to refuse overtime is waived is in cases of an accident or emergency repairs (section 19 of the Act). There is some difference of opinion on whether the individual right to refuse overtime also is waived when the 8-hour-day maximum has been altered to a 12-hour-day maximum, under section 18 of the Act. Current legal interpretation applied by the Employment Standards Branch is that the right to refuse beyond 8 hours per day is still applicable under that arrangement. Apparently the issue has never been tested.

Special Overtime Pay Provisions

Flexibility was to be attained not only through the various exemptions, but also through the special overtime pay provisions outlined in Regulation 285, sections 16 and 17. These special provisions basically raised from 44 hours the number of hours after which the overtime premium commences for certain classes of employees. The seven groups affected were roadbuilding — streets, highways, parking lots (55 hours); roadbuilding — bridges, tunnels, retaining walls (50 hours); local cartage (50 hours); highway transport (60 hours); seasonal hotel, motel, restaurant, etc., with room and board (50 hours); seasonal fresh fruit and vegetable processing (50 hours); sewer and watermain construction (50 hours).

In the case of roadbuilding and sewer and watermain construction, special treatment was rationalized on the grounds that long hours were required because of the short season and the need to work during daylight hours and when the weather permitted. Allowing the overtime premium to commence after 44 hours would have significantly increased the costs for provincial and municipal governments. As well, the legislative standard of 50 and 55 hours in those sectors reflected prevailing overtime provisions in their collective agreements.

Similarly, the special treatment for seasonal employees involved in the processing of fresh fruits or vegetables and in the hotel-resort-restaurant trade (those provided with room and board) was rationalized because long hours were needed owing to the short season and the need to work when the weather was good. Also, because many employees were away from home, long hours would help amortize the fixed costs of room and board. For local cartage and trucking, flexibility was dictated by special conditions arising from the work being away from the home base and having to be geared to weather conditions and the customer's time requirements.

In essence, however, the special treatments are based on cost considerations, since the special treatments basically exempt employers from having to pay the overtime premium of time-and-one-half for the 6 hours between the usual legislated overtime trigger at 44 hours and the new trigger, which is usually set at 50 hours. In that sense, the rationale is based on the belief that it would be unfair for such employers to have to bear the cost of the overtime premium's commencing at the usual 44-hour limit, when their particular circumstances often dictate a longer workweek, usually for a shorter season. Obviously, this can potentially conflict with the worksharing rationale for restricting overtime. In many of these circumstances, more employees could be hired if the longer hours were discouraged by having the overtime premium start after the usual 44 hours.

Permits

Flexibility was also to be attained by what appears to be an elaborate permit system, the origins of which were established in the major changes that occurred in 1944. Basically, three types of excess-hours permits were created: 100-hour permits, industry permits, and special permits.

100-Hour Permit

The annual 100-hour or "blue permits" are issued virtually automatically upon request, and they remain valid until surrendered or withdrawn by the administrator of the Act. From 1948-49 to 1985-86, an estimated 35,939 initial 100-hour permits were issued, of which 435 were granted in the 1985-86 fiscal year. Table 4.7 gives the number of 100-hour permits (as well as special permits, which are discussed subsequently in this chapter) for the years 1960-1986.

The large number of 100-hour permits issued in the early 1960s reflects an administrative decision to enforce employment standards more strictly, particularly through an expansion of the field staff for routine audits, and to inform employers about the need for compliance. The result was an increase in requests for permits from employers who otherwise did not know that they needed them or who were not bothering to comply. The large increase in the number of permits in 1968-69 reflected the establishment (at that time) of the Employment Standards Act. Although the old permit was automatically extended under the new legislation, many employers still applied for a new one.

Employers do not have to provide an explanation of their need for the 100-hour permit. Also, emergency hours under section 19 are not charged against permit hours. Employers cannot average the 100 hours over different employees; the 100 hours apply to each employee. As well, the overtime premium must be paid after the 44-hour standard workweek, irrespective of the existence of a permit; only the special overtime provisions for such sectors as roadbuilding, transport, or seasonal hotels alter the trigger after which the overtime premium is paid.

For a number of specific occupations (engineers, firefighters, maintenance workers, receivers, shippers, truck drivers, watch guards, and similar occupations), the blue permit allows 12 hours per week beyond the maximum workweek of 48 hours; in effect, this allows a 60-hour week for such groups. Based on 50 weeks per year, this allowance could lead to a substantial 600 hours of overtime per year.

The annual 100-hour permit basically allows employers to add an average of an additional 2 hours of overtime per week to the statutory maximum of 48 hours per week. It provides more flexibility than would a 50-hour maximum because it enables the employer to exceed the 50 hours in some periods, provided that over a year the overtime averages only 2 hours per week. This flexibility, however, comes at the expense of enabling employers to work their employees extremely large amounts of overtime in particular periods, a procedure that could be detrimental to the health and safety of the workers. This potential problem is mitigated by the fact that employees still have the right to refuse overtime beyond the 8-hour-day or 48-hour-week statutory maximum. Although a regular workday of more than 12 hours is prohibited, through the use of permit hours an employer may schedule workdays longer than 12 hours on a regular basis. The limiting factor is the quantum of the permit hours.

Although the individual right to refuse overtime beyond 48 hours and the 8-hour daily maximum may mitigate somewhat the potential health and safety hazards arising from the 100-hour permit, the flexibility provided by that permit does come at the expense of reducing the potential for worksharing. That is, the additional overtime allowed by the 100-hour permit may put less pressure on employers to hire new workers. The potential for worksharing through restrictions on overtime will be discussed in detail in Chapters 12 and 13; at this stage, we are simply pointing out the flexibility that employers enjoy as a result of the averaging provisions. However, as there always is in such cases, a trade-off exists. The flexibility can reduce the potential for worksharing.

Industry Permits

Currently, 26 industry permits exist for particular industries where the standard administration of the legislation, including the 100-hour permits, was deemed to be too rigid. These 26 industries, covering approximately 864,000 employees, are listed in Table 4.8, in descending order according to the number of employees involved. The 864,000 employees under the industry permits represent about 25 per cent of the 3.5 million paid employees covered by the Act, or 33 per cent of the 2.6 million workers who are not exempt from the hours-of-work provisions. Almost half of the workers under the industry permit system are in the retail trade sector; a further one-quarter are in the hotel, motel, resort, restaurant, and tavern business.

In all the industry permits (except for the "camps for children" permit), the maximum for the regular workday is extended from 8 to 10 hours. This is done under the authority of section 18 of the Act, which allows the Director to grant "a regular day of work in excess of eight hours but not in excess of twelve hours." In addition, the 26 industry permits usually incorporate the 100-hour annual permits (and the 12-hour weekly permits for the eight specified categories of employees), as authorized under subsection 20(1) of the Act. Most importantly, the 26 industry permits usually allow additional excess hours, often to specific categories of employees (last column of Table 4.8). Specified amounts of additional hours include hours as required, 12 hours weekly, and 250 hours yearly. Specified groups of employees for which the industry permits are granted include "specified categories of employees" (i.e., the eight categories that are granted 12 hours per week beyond the maximum workweek of 48 hours in section 20(1)(a)), all nonoffice workers, all production workers, and all job site workers.

For example, all employers in the retail trade sector have been granted the equivalent of the 12 excess hours per week for the eight "specified categories of employees" and 100 excess hours per year for all other employees. As we see in the last column of Table 4.8, however, they have been granted no further exemptions. Thus, the whole industry automatically receives what each individual employer would have been granted upon application for a 100-hour permit. The benefit received, therefore, is essentially the saving in administrative costs from each individual employer's not having to apply for the 100-hour permit, and the fact that employers automatically are exempt from the 8-hour daily maximum and can schedule up to a 10-hour day.

In contrast, the hotel-motel-resort-restaurant-tavern sector has been granted not only the 12 hours per week for "eight specified categories of employees" and 100 hours per year for all others, but also excess hours as required for all seasonal employees and 12 hours per week for four additional "specified categories of employees." Thus the "specified categories of employees" to which the 12-hour per week allowance applies has been increased to 12.

As with the 100-hour permits, the 26 industry permits remain in effect until revoked by the Director. Most of the industry permits were established soon after the 1944 legislative changes that otherwise would have established fairly stringent (for that time) maximum-hours-of-work regulations with extensive coverage. Only one permit — camps for children — has been granted since the Employment Standards Act of 1968, and none has been revoked. All existing permits were reissued in 1975.

There appear to be a number of rationales for the industry permits. First, it is administratively simpler to grant such a permit to the whole industry than to respond identically to each individual employer. This is obviously the case in such sectors as retail trade. Second, a casual glance at the nature of an industry indicates that it often requires unusual working hours when compared with the hours requirements of most employers. This may occur, for example, because of seasonal peak demands (as with hotels) or because of needs for a particular employee to complete a particular job (as with highway transport). Third, the particular industry permits may simply reflect the ability of the industry to organize itself to have sufficient political influence to obtain special treatment. In actual fact, however, the special treatment is relatively minor, amounting to what employers could obtain by applying individually, or perhaps through the addition of another category or two for the 12 hours per week for "specified categories of employees."

Although the special treatment appears innocuous in many if not most circumstances, it does reduce the scrutiny of the Employment Standards Branch on those particular sectors. It also puts less pressure on employers in those sectors to think of whether they really *do* need to exceed the statutory maximum hours; they do not have to apply individually for the 100-hour permit, and they are less likely to have to go through the more complex scrutiny involved in the special permit request. In addition, the fact that most of the industry permits have not changed substantially since the 1940s, in spite of the dramatic industrial and technological changes since that time, suggests that their relevance be re-examined under today's different circumstances.

Special Permits

Description

In addition to the 100-hour permits and the 26 industry permits, special permits, under subsection 20(2) of the Employment Standards Act, can also be granted by the Director where "the work or the perishable nature of raw material being processed" requires hours of work in excess of those granted by the 100-hour permit. The permit expires no later than December 31 of the year; however, there is no restriction on the number that may be issued to one employer, and, hence, the employer can effectively re-apply for another permit should the circumstances dictate.

Special permits, popularly known as "green permits," are designed to provide the residual flexibility that may be necessary once the annual 100-hour permit is exhausted and additional hours are still required. These permits were intended to accommodate *unusual* circumstances, however, not *regularly scheduled* overtime, so the procedure is a more closely controlled process. The application must show the number of employees in each class who will be working the requested number of hours, and the need for the additional hours. Common reasons given for requesting the special permits are a need to meet increased demand and the need to reorganize in order to produce new products.

The approval process for special permits tends to become a negotiation that reduces the request to its most essential elements. For example, requests for excess hours for categories like general labourer or helper may be disallowed since such categories could more easily be filled by hiring additional workers. Similarly, the approval may be only for a short time period and conditional upon the employer's taking steps to reduce the need for excess hours through training, reorganization, or workforce expansion. In addition, the Director may reconsider the decision in the light of new information.

Clearly, this negotiation process provides flexibility that can be geared to the peculiarities of each situation and to the state of the economy. It also compels employers to think through their needs for excess hours and may induce them to reconsider alternatives such as training, reorganization, or workforce expansion. Like all negotiating processes, however, this one can lead to strategic behaviour; in particular, employers may simply inflate their requests, knowing that they may be scaled down during negotiations. (In that vein, simple approval or rejection of the request — akin to final-offer arbitration — would deter such strategic behaviour and encourage reasonable requests, although at the possible expense of denying permits when there is a legitimate need.) In addition, the permit process puts some onus on the Employment Standards Branch to develop criteria for approving or rejecting a permit.

Union Approval

Recently, the Employment Standards Branch made an administrative decision to obtain union input, and preferably union agreement, before a special permit could be granted to a unionized employer. This is important because the union may be able to provide information on the availability of alternatives (for example, recalling workers from layoff, or the possibility of an alternative shift). In addition, it compels the union to consider explicitly its own internal trade-off between the additional income for those who work the overtime, and possible new jobs. Such pressures are likely to reduce the amount of overtime that is used when viable alternatives are available.

Analysis of Special Permits

In 1985, the Employment Standards Branch published a report on the special permit system: *Excess Hours "Special" Permits Issued for 1983 under the Employment Standards Act*. That report which also contained some historical information, provided a number of interesting facts about the special permits:

- The number of special permits are procyclical, increasing in an expansion phase of the business cycle and decreasing in the recession.
- The 249 special permits issued in 1983 were concentrated in only 80 establishments. In fact, 5 establishments held more than half of all the special permits, accounting for almost one-third of all the excess hours granted in those permits.
- In those 5 establishments, the overtime hours were also concentrated on a relatively small number of employees as evidenced by the fact that they accounted for 30.9 per cent of all excess hours granted but only 13.5 per cent of all employees covered by the permits.
- The special permits tended to be concentrated in large, unionized establishments and in those operating continuous shifts.
- Manufacturing accounted for 90 per cent of all permits and 89 per cent of all excess hours

granted. Within manufacturing, the transportation equipment sector (for example, auto manufacturing) accounted for 50 per cent of all special permits and 41 per cent of all excess hours granted. Nevertheless, the permitted hours in the transportation sector were, as a percentage, smaller than the average for all industries, when based on total hours available for establishments requesting permits (1.6 per cent versus 2.5 per cent). This same phenomenon appears when permitted hours as a proportion of total hours in the establishments are considered (1.0 per cent compared with 1.3 per cent).

- A similar complicated pattern exists with respect to the distribution and incidence of permitted hours granted by occupation. Of the 276 occupations for which excess hours were granted, 6.9 per cent of the excess hours were granted to tool and die makers, 5.8 per cent to electrical lighting and equipment installers and repairers, 5.7 per cent to power press tenders, 5.0 per cent to moulders, 3.5 per cent to automotive assemblers, 3.4 per cent to motor vehicle mechanics, and 3.3 per cent to truck drivers. In some of these occupations, the excess hours were also an above-average proportion of the total hours of work in the occupation. However, automotive assemblers had only 0.7 per cent of their total hours worked as excess hours through special permits, compared with an average of 2.5 per cent in all occupations for which special permits were granted. A substantial portion of the total excess hours granted through special permits went to automotive assemblers simply because a large percentage of the requests for permits were from auto-related employers, not because each automotive assembly worker works a lot of excess hours. As in presenting a general picture of overtime work (Chapter 2), care must be taken to distinguish between the distribution of overtime hours (which can reflect the size of a particular workforce and its tendency to work overtime) and the incidence of overtime (which reflects the tendency of a particular workforce to work overtime).
- In descending order of importance, the most common reasons for requesting an excess-hours permit were: to meet increased demand, reorganization, seasonal patterns; to maintain production standards, specialized skills; and to accommodate collective agreement restrictions on hiring part-time help. The last was the most common reason given in the motor vehicle fabricating and assembling occupations.
- Of the 80 establishments that obtained excess-hours permits, 9 had layoffs constituting about 5 per cent of the total workforce, compared with the excess hours that constituted about 0.7 per cent of the total hours of those establishments. This suggests that approximately 14 per cent (0.7/5) of those layoffs could have been avoided if *all* the excess hours were converted to recalls. This is obviously an upper bound estimate since those on layoff are very unlikely to be a perfect substitute for those working the excess hours, albeit the excess hours could perhaps be converted to new jobs for others who are not on layoff at the particular establishment.
- Overall, the excess hours granted through the special permit system constituted 2.5 per cent of the hours worked in those occupations in the establishments for which permits were granted and 1.1 per cent of the total hours worked in all occupations in those establishments.

Problems with Special Permits

Despite the quantitative insignificance of the special permits as a source of overtime, they have received the most public attention. This stems in part from the fact that they were intended to accommodate unusual and temporary needs. Yet there is the perception that they have become a more permanent feature of the work scheduling in particular sectors. There is also the perception that they have been granted in cases where the additional-hours requirements could have been met by new hiring or even recalls from layoffs. In some situations, this has led to confrontation at the plant level, with some workers who work the overtime being accused of taking the jobs of others.

The special permits can also create administrative problems at the Employment Standards Branch, in part because discretion and negotiation are involved. This is particularly difficult in the absence of a firm set of criteria upon which to grant or refuse such a permit. In the 1950s this was not a problem because, in most cases, special permits were issued only when there was a proven labour shortage, a situation that was easy to validate because occupations for which there was a shortage were well known. Gradually, other factors such as reorganizations, plant conversions or renovations, and unforeseen demand changes gained recognition as rationales for special permits.

The dilemma for the Branch is to adhere to a narrow set of criteria including, for example, a proven labour shortage, and run the risk of losing jobs because companies cannot meet the demands for their products and perhaps will relocate some of their operations elsewhere. The alternative is to grant the special permits liberally and to run the risk that fewer new workers will be hired or fewer workers on layoff will be recalled. To a certain extent, the appropriate response depends upon the job-creation potential of the two alternatives. Unfortunately, as will be discussed later, the empirical evidence does not provide an unambiguous answer for the job-creating potential of these alternatives.

To facilitate the decision-making process, the Branch has recently developed a questionnaire that its staff uses when interviewing union representatives to solicit their views. Another questionnaire seeks information from the employer on the reasons for the overtime request and the extent to which alternatives have been exhausted.

While the questionnaires may at times seem innocuous and a mere formality, they do serve a number of useful functions. They compel the parties to think about alternatives to overtime and provide information on the reasons for overtime. They also compel unions to consider more directly the possibility of trade-offs between overtime for some workers and new jobs or recalls for others, and enable them to suggest where the new jobs could be created if overtime were restricted. For these reasons, it seems desirable to continue compiling the questionnaire information, given the low cost of acquiring it.

The current resources of the Employment Standards Branch simply do not enable the Branch to make a viable determination of the true need for the special permits. The result is a sense of frustration at being asked to do the impossible. Although resources may help in terms of volume of work, it is not clear that the decision-making dilemma caused by lack of criteria would be resolved.

Flexible Workday and Workweek Averaging

In addition to the exemptions, special overtime provisions, and the variety of permits, further flexibility is obtained by allowing the Director to approve special arrangements that would otherwise be constrained by the maximum workday of 8 hours and workweek of 48 hours as required by section 17 of the Act. Specifically, section 18 of the Act allows the Director to approve a *regular* workday of up to 12 hours. This has been used, for example, to allow automatically up to a 10-hour day in the 26 industry permits. It has also been issued to allow certain compressed work schedules, such as four 10-hour days.

Subsection 2(2) of Regulation 285 also allows the Director to approve certain averaging arrangements, over a period of 2 or more weeks, which would exempt employers from the maximum hours of 8 per day and 48 per week (section 17 of the Act) and from the overtime premium (subsection 25(1) of the Act), the latter until the *average* hours over the schedule exceeded 44 per week. In theory, the exemption from the maximum-hours provisions could allow a tremendous number of hours to be worked in a day or week, provided they were within the averaging agreement. In practice, however, the averaging agreements allow weekly hours to be averaged over the cycle of the schedule for purposes of overtime pay. Apparently, approval is not granted if the regular schedule would average more than 44 hours per week.

If the averaged regular weekly hours exceed 44 hours, then an averaging permit will not be issued, and the overtime premium will apply to *any* hours beyond 44 per week, not simply the averaged hours beyond the 44. Averaging approval is given on the basis of a specific schedule. If *regular* overtime exists but is not shown on the schedule, then the employer effectively is operating on a different schedule from the one approved — and the averaging approval would not cover such a schedule. If, however, the consideration is irregular overtime that results in the weekly average *occasionally* exceeding 44 hours, the employer still has the benefit of averaging and is liable for overtime pay only for hours exceeding of an average of 44 per week (as opposed to hours over 44 in any particular week).

The averaging provisions also appear to have inadvertently created a loophole, albeit one that does not seem to have created major problems. That is, the averaging arrangements have been interpreted as referring to *regular scheduled* worktime arrangements that are approved by the Director. Once these are approved, the employer is exempt from section 17 of the Act, which specifies an 8-hour-day and 48-hour-week maximum. In some cases, employers have then scheduled additional occasional overtime, being exempt from the requirement to obtain special permission through a permit.

Although the flexible workday and workweek arrangements do provide additional flexibility to accommodate alternative worktime schedules, they come at the potential cost of jeopardizing the health and safety of the workers who work those long hours. This is mitigated somewhat by the fact that the right to refuse overtime beyond 8 hours per day or 48 hours per week theoretically still applies under the averaging provisions or the extended workday, although this right does not appear to be exercised in practice under such circumstances. As a matter of practice, employers must provide evidence that the employees *as a group* are willing to work the longer workday or workweek, and thus consent under subsection 20(3) may be seen as having already been given. This can still go against wishes of some individual workers, however, who are unlikely to exercise their right to refuse, although employers may voluntarily accommodate their wishes.

Even if the health and safety of individual workers were somewhat protected by the right to refuse long workdays or workweeks, the health and safety of *others* may be affected by the decision of employers and employees to agree to such arrangements. This is most obvious in situations like those that exist in hospitals, where long hours may affect the quality of service provided to patients. For this reason, care obviously must be exercised in authorizing such long-hour arrangements — even if they are wanted by the parties — when the health and safety of *others* may be at risk. In hospitals, for example, where employees work rotating and irregular shift schedules, the question is whether safety considerations are better served by longer daily hours with more days off, or shorter daily hours with fewer days off and — probably — with a greater number of consecutive days of work.

SUMMARY OF EXEMPTIONS, SPECIAL PROVISIONS, AND PERMITS

- *The hours-of-work and overtime provisions are not rigid regulations but rather are made flexible by a complicated — bewildering, some might say — array of exemptions, special provisions, and permits.*
- *In fact, the structure is so complicated that its totality is likely understood only by a handful of persons. It is unlikely, for example, that many persons know the answer to such questions as: Does the right to refuse overtime apply to approved workdays that are extended up to 12 hours? Would the averaging provisions allow a 50-hour week as long as it was followed by a 46-hour week so that they averaged to the maximum of 48 hours? If approved average hours are exceeded, would the overtime premium apply to any hours beyond 44 per week or to the average beyond 44? What are the provisions for domestic servants and domestics and nannies? What is the difference between domestic servants and nannies?*
- *While the overall complexity may be bewildering for all but the experts, particular groups are more likely to know the relevant sections of the Act that apply to them. Nevertheless, discussions at the public meetings of the Task Force suggest that this is not always the case. For example, some groups erroneously thought that the 100-hour permits had been cancelled.*
- *While the rationale for exemptions or special treatment often seems clear in particular cases, in other cases discrepancies and inconsistencies appear.*
- *The exemptions and special considerations also illustrate that no rationale for discouraging overtime is sacrosanct. That is, the flexibility rationale invariably works against some other rationale, namely, protecting the health and safety of workers, protecting those with little individual bargaining power, or encouraging worksharing.*
- *The exemptions alone exclude about 25 per cent of the paid workforce from the hours-of-work provisions of the Act.*
- *The special permits are highly concentrated, with 5 establishments accounting for over half of the special permits and one-third of the excess hours granted under these permits in 1983. These permits were concentrated in the transportation equipment sector.*
- *Of the 80 establishments that obtained excess-hours permits in 1983, 9 had layoffs involving about 5 per cent of the workforce. If all of the excess hours were converted to recalls from layoff, about 14 per cent (but probably less) of the layoffs could have been avoided.*
- *In spite of their quantitative insignificance, the special permits have given rise to numerous problems because of their concentration and because of the difficulty of establishing criteria to accept or reject a permit request.*
- *Clearly, flexibility is attained by the various exemptions, special overtime provisions, and permits. The real questions, however, are: Does this come at the expense of negating much of the purpose of the legislation? Are the flexibility arrangements too complicated and perhaps arbitrary? Are they still necessary in their present form, given the changing circumstances since many were instituted? If they are altered, what should be put in their place?*

CHAPTER 5

Enforcement Procedures and Compliance

Any regulatory system as complex as the one outlined in the preceding chapter will most naturally deal with the interrelated issues of information dissemination, enforcement, and compliance — the subject matter of this chapter. These tasks are the responsibility of the Ontario Ministry of Labour's Employment Standards Branch, which administers the hours-of-work and overtime provisions of the Act as well as all other provisions, notably minimum wages, equal pay, pregnancy leave, and termination of employment. As of 1986, the Branch had a complement of 177 positions of which 92 were officers directly engaged in procedures to ensure compliance.

The present chapter draws on several sources: a background report prepared for the Task Force by John Kinley, entitled *Current Administration of Legislated Standards on Hours of Work in Ontario*; annual reports and background materials from the Employment Standards Branch and discussions with its officials; and briefs presented to the Task Force and transcripts from its public meetings.

Information Dissemination

The Branch provides information on employment standards to employees and employers in a number of ways including responding to direct inquiries, distributing publications, and conducting public seminars. For example, in fiscal year 1985-86 the Branch handled 759,801 enquiries: 726,636 by telephone, 29,210 by interview, and 3,955 by letter. In addition, 101,432 calls were made to the Branch's electronic telephone information system, and about 200,000 copies of the *Guide to the Employment Standards Act* were distributed. This information service has involved the time commitment of at least 20 person years annually.

Although a complete analysis of this function by subject matter (for example, hours of work) or source of question (for example, employer or employee) is not available, questions relating to hours of work apparently are not infrequent. A five-day count of the telephone enquiries indicated the following breakdown by the type of question: vacation with pay, 14 per cent; holidays with pay, 12 per cent; overtime pay, 4 per cent; maximum hours, 4 per cent; all others, 66 per cent. Undoubtedly, most of the questions pertaining to vacations, holidays, and overtime had to do with remuneration for those events.

In 1985-86, the Branch also conducted 176 public appearances and education seminars attended by about 4,900 participants of whom 2,000 were employers or supervisors. Information is also disseminated as a byproduct of various other procedures conducted by the Branch; for example, through requests for a special permit or through the investigation and settlement of complaints. The extent of information sought by employers also appears to be a function of the extent to which they feel that the provisions will be enforced. For example, the recent announcement by the Minister that excessive overtime is being worked and that its reduction may create new jobs has prompted many employers to seek assistance from the Branch on how to bring their own hours-of-work practices into line with the requirements of the Act.

Investigation of Complaints

Normal Procedures

The two principal procedures for enforcing the Employment Standards Act are the investigation of complaints and the conducting of routine audits or inspections, both by certified officers. The complaints procedure usually involves the following steps. A worker, a worker's representative, or occasionally a competing employer, lodges a complaint about an alleged violation of a standard. The complaint must be made in writing. A claim information form is available from the Ministry but is not required for a claim to be made. Usually the complaint involves a claim for compensation associated with a violation of the Act; for example, for entitlements to overtime pay.

Once in receipt of the claim, the employment standards officer begins an investigation. To save time and costs, every effort is made to secure a settlement by telephone or letter. In 1985-86, 58 per cent of the complaints were settled in this fashion, with 42 per cent requiring a visit to the employer (Table 5.1).

The visit to the employer involves an inspection of employment and payroll records not only to validate claims but often to conduct a test audit of the employer's adherence to *other* provisions of the Employment Standards Act. Apparently, about 30 per cent of the claims that are investigated by a visit to the establishment also involve such a test or full audit. This procedure is important because it might encourage the employer to settle the claim at an earlier stage, by telephone or letter if possible, to avoid the more costly audit. There is no information on how many employers might anticipate an audit if visited. Employers are not told that there might be an audit; the employment standards officer simply requests an appointment to discuss the claim.

The prospect of internal disruptions and costs is an important deterrent, since otherwise there is little monetary incentive to comply with the legislation. The remedy for an hours-of-work violation is prosecution of the employer, but the penalty for being in violation of the overtime provision is basically the cost of settling a claim that the employer loses plus an additional 10 per cent of the wage compensation (as levied under paragraph 47(1)(c) of the Employment Standards Act). That 10 per cent is not assessed if the employer pays the employee directly, and in that sense the employers are virtually no worse off after losing the claim than they would have been had they complied with the standards in the first place. That is, the claim imposes substantially no greater penalty than what the employer would have had to pay by complying with the legislation all along. Theoretically, then, the worst that can happen is that the employers pay what they would have paid by complying. In actual fact, however, this understates the difficulty for an employer, particularly a small business enterprise, of having to pay the full amount at once when a former employee who had agreed to a lieu time arrangement (time-off in lieu of the overtime premium payment) makes an overtime pay claim.

To be sure, a still heavier penalty is possible under section 59 of the Act, which provides for a fine of not more than $10,000 or imprisonment for a term of not more than six months, or both. Such penalties, however, are not applied to employers who would comply with a claim once ordered to do so, but only upon conviction as a result of prosecution. These penalties are envisaged only as ultimate sanctions for employers who refuse to comply with claims for which they are deemed to be in violation of the Act.

In the process of investigating a complaint, the employment standards officer has the right, under section 45 of the Act, to enter the establishment and to examine the relevant documents or to question persons. The officer then determines the validity of the claims. As indicated in Table 5.1, in 1985-86 approximately 72 per cent of the claims were assessed as valid and the employer deemed to be in violation of the Act.

Appeals and Review Procedures

Appeals procedures can be initiated by employees (section 49) or by employers (section 50), or a referee may be appointed at the discretion of the Director of the Employment Standards Branch (section 51).

Under section 49 of the Act, an *employee* who is dissatisfied with the decision may request a review by a second officer, whose decision is final. This appeals procedure is available only for decisions pertaining to wages that are owed to the employee because the employer has violated one of the standards, and reviews are seldom, if ever, denied. As indicated in Table 5.1, in 1985-86 there were 145 requests for reviews by a second officer, representing 3.0 per cent of the 4,764 claims that were disallowed by the first officer. Of these 145 requests for reviews, 62 per cent were confirmed and 38 per cent were revised to be in favour of the employee. Thus, even though the review process remains internal to the Branch, it is by no means a rubber-stamping of the first officer's decision.

Under section 50 of the Act, an *employer* who is dissatisfied with the decision may request a review by an external referee who may rescind, amend, or sustain the decision of the Branch officer. Upon applying for a review of a decision, employers must pay wages ordered plus an added penalty, to be held by the Director. This appeals procedure applies only to orders pertaining to wages owed, lie detector enforcement, or pregnancy leave. As indicated in Table 5.1, in 1985-86, 283 (2.3 per cent) of the 12,413 violations were appealed by the employer. Of those 283 appeals, 45 (16 per cent) were settled without a hearing. The remaining 238 were heard by the external referee, with 15 per cent being rescinded, 20 per cent amended, and 65 per cent sustained.

Apparently, allowing the employer a review by an external referee while restricting the employee to a review by a second officer was rationalized on the grounds that the Branch's purpose is to assist employees in their legitimate claims. The presumption was that an employee's

Table 5.1

Resolution of Complaints Under Ontario's Employment Standards Act, 1985-86

Resolution	Number	Per Cent
Total complaint completions	17,177	100.00
Resolved by phone or letter	9,998	58.2% of 17,177 complaints
Resolved by visit	7,179	41.8% of 17,177 complaints
Violations	12,411	72.3% of 17,177 complaints
Disallowed	4,764	27.7% of 17,177 complaints
Employees requesting review (by 2nd officer)	145	3.0% of 4,764 disallowed
Favour employer	90	62.1% of [illegible]5 reviewed
Favour employee	55	37.9% of 145 reviewed
Employers requesting review (by referee)	283	2.3% of 12,413 violations
Settled without hearing	45	15.9% of 283 reviewed
Decisions by referee	238	84.1% of 283 reviewed
Rescinded	35	14.7% of 238 heard
Amended	48	20.2% of 238 heard
Sustained	155	65.1% of 238 heard

Source: Kinley (1987a, Table 1). The original data source was information provided by the Employment Standards Branch of the Ontario Ministry of Labour.

review by a second officer would be sufficient because the Branch represents employees' interests. In such circumstances, however, an impartial judgment for employers' appeals may require an independent third party.

There was also some concern that some appeals by employees may be frivolous although it is by no means obvious why this should be the case for employees more than for employers. The data presented in Table 5.1 indicate that employees requested a review in only 3.0 per cent of the cases, compared with 2.3 per cent of the cases for employers.

The potential for bias in the appeals procedure, however, and the asymmetry of the procedure for employers and employees, were not matters raised in the public meetings or briefs. Furthermore, the fact that the second officer often reversed the decision of the first officer suggests that employee appeals are given serious consideration. Certainly, the appeal through a second officer is less costly than having an external referee. For these reasons, there is some merit in retaining the current appeals system. Nevertheless, justice not only has to be done but must appear to be done. In that vein, the asymmetry in the appeals procedure between employers and employees appears anomalous. This is compounded by the fact that employers can appeal on issues pertaining to wages owed, lie detectors, or pregnancy leave, while formally employees are restricted to appeals only for wages owed (although in practice the Employment Standards Branch would provide a review in these other areas).

The current appeals procedure for employers has an additional problem. As it stands, the appeals procedure is free, except for the time it takes to go through the appeal. This means that there is not a monetary incentive to deter employers from engaging in what may be a frivolous appeal. For that reason, consideration should be given to employers' paying the costs associated with unsuccessful appeals.

Under section 51 of the Act, the Director may appoint a referee in special circumstances involving controversial issues arising from the law or the facts of the case, or where there are doubts as to the application of the Act. The referee's decision is final. In 1985-86, there were 13 section 51 cases settled: 4 were settled voluntarily before the referee held the hearing, and 9 were settled by the referee (who found a violation in 4 of the 9 cases).

Since compensation is not at issue in cases involving maximum-hours-of-work provisions, employees and employers cannot, under sections 49 or 50, appeal findings of investigating officers. These appeals, however, can be made over unpaid overtime, or statutory holiday or vacation pay. Although section 51 cases (involving the appointment of a referee by the Director) are theoretically possible over issues pertaining to maximum hours, the Employment Standards Branch has no record of such a case having occurred.

For either employers or employees, there is always the ultimate appeal for a judicial review through the courts. Especially for employees, however, this option is rarely taken, given the costs involved. In 1985-86, the 10 judicial review cases that were finalized all pertained to referee decisions under section 50 (initiated by employers) or section 51 (initiated by the Director).

Nature of Complaints

The figures in the last column of Table 5.2 show that the various hours-of-work standards pertaining to overtime, public holidays, and vacation pay collectively accounted for almost half (46.7 per cent) of the dollar value of the amounts collected for violations of the Employment Standards Act. The only other standards involving significant collections were unpaid wages (25.3 per cent) and termination pay (18.4 per cent).

The overtime and public holidays standards, and to a lesser extent the vacation pay standard, had above-average ratios of collections to assessments, in large part because such claims (as opposed to termination pay or severance pay claims) do not usually involve standards pertaining to the bankruptcy or closing down of an organization, where collection obviously is more difficult. (The relationship between assessments and collections is discussed in more detail later in this chapter.)

Although not shown on the table, more than 90 per cent of the claimants are *former* employees of the employers named in the claims filed. This highlights the fact that much of the function of the Employment Standards Branch is to serve as a collection service for disgruntled employees who have left their former employer (Adams 1987). Critics could claim that this situation does not do much to provide a safety net or minimum set of standards for employees who remain with their employer. Also, this figure suggests that fear of reprisal, even though reprisal is illegal, deters employees from making a claim unless they are leaving the company.

What is not known, however, is the extent to which these settlements deter similar behaviour on the part of other employers, perhaps even against employees who remain with the company. It is possible that such a collection service, even with such small amounts (documented subsequently), deters the employer who pays the settlement, or even other employers, from the behaviour that necessitated the settlement in the first place. It is also possible that the collection service is a trivial function and simply gives disgruntled former employees "one last shot" at

Table 5.2

Assessments and Collections by Various Standards Under Ontario's Employment Standards Act, 1985-86

Standard	Assessed	Collected	Collected as Per Cent of Assessed	Per Cent Collected by Standard
	$	$	%	%
Minimum wage	**106,555**	**101,892**	**95.6**	1.2
Overtime	**999,863**	**945,107**	**94.5**	11.4
Public holidays	**346,703**	**332,347**	**95.9**	4.0
Vacation pay	3,550,798	2,604,620	73.4	31.3
Equal pay	97,180	97,180	100.0	1.2
Benefits	12,659	12,659	100.0	0.2
Pregnancy leave	**36,205**	**20,205**	**55.8**	0.2
Termination pay	**6,390,862**	**1,532,700**	**24.0**	18.4
Benefits during notice	**14,750**	**4,799**	**32.5**	0.1
Severance pay	7,996,404	561,019	7.0	6.7
Unpaid wages	3,056,351	2,101,745	68.8	25.3
Lie detector	—	—	—	—
Fair wages	**3,480**	**3,030**	**87.1**	**0.0**
Industrial standards	**258**	**258**	**100.0**	**0.0**
All standards	**22,612,068**	**8,317,541**	**36.8**	**100.0**

Note: Figures on amounts collected reflect status at the time the officer closed the file. Some outstanding wages owing would be subsequently collected, although not likely the case in bankruptcy and insolvency situations. Technically the Fair Wage and Industrial Standards are not covered under the Employment Standards Act.

Source: Calculated from data given in Ontario Ministry of Labour, Employment Standards Branch, annual report, 1985-86, p. 19.

their employer. At this stage, we simply do not know the effectiveness or ineffectiveness of the claims procedure.

Routine Audits or Inspections

In addition to the investigation of complaints, the Employment Standards Branch enforces the Act by conducting audits or inspections. Such audits may be taken in response to a complaint or as part of a routine inspection carried out by the Branch.

A review of the figures in Table 5.3 indicates that the number of such audits as part of a routine inspection has declined dramatically in recent years; for example, from 1,304 in 1980-81 to only 102 in 1985-86. A routine audit is quite likely to uncover a violation of the Act, as illustrated by the fact that about 35 per cent of the routine inspections uncovered violations in 1985-86 (Employment Standards Branch, 1985-86 annual report). Routine investigations are carried out in establishments according to past experience that suggests which industries and types of firms are most likely to be in violation of the Act.

The number of workers compensated as a result of the violations is quite small — for example, 265 workers in 1985-86 — implying an average of slightly over two workers per routine investigation, or 7.4 workers per investigation where noncompliance was found. In addition, the amount of compensation turns out to be quite small, in 1985-86 averaging only $373 per compensated worker. Clearly, the real resource cost of conducting a routine investigation is not merited for the small amounts of the collections involved. The investigation would have to be merited on the grounds of the deterrent effect it may have on employers for the benefit of other workers. That is, the threat of investigation may induce employers to comply. Nevertheless this is unlikely, given the small amounts of the assessments involved.

Table 5.3

Routine Inspections* Conducted by Employment Standards Branch, Ontario, 1981-82 to 1985-86

Fiscal Year	Routine Inspections	Workers Compensated	Collection Per Worker Compensated
1980-81	1,304	2,891	$113
1981-82	1,183	1,919	$119
1982-83	936	2,557	$184
1983-84	672	1,090	$121
1984-85	321	781	$570
1985-86	102	265	$373

* Does not include inspections conducted in conjunction with the investigation of a complaint. In 1985-86, 2,045 audits were instigated by claims (Ontario Ministry of Labour, Employment Standards Branch, annual report, 1985-86, p.12).

Source: Calculated from data given in Ontario Ministry of Labour, Employment Standards Branch, annual reports: 1985-86 report, p. 15 (for 1984-85 and 1985-86 calculations); 1983-84 report, pp. 10, 23 (for 1983-84 and 1982-83 calculations); 1981-82 report, pp. 22, 23 (for 1981-82 and 1980-81 calculations).

Assessments and Collections

The small amounts of the assessments (wages found owing) are further illustrated in the data of Table 5.4, which indicate that the amounts are small in cases involving complaints as well as routine investigations, and that under both circumstances the assessed amounts are not always collected.

For example, in 1985-86 only about 37 per cent of the dollar value of the assessments was collected from employers and, hence, subsequently distributed to the employees. To a large extent this occurs because such employers are going out of business. As indicated in the second and third columns, 95 per cent of the employers did pay assessments, which resulted in 84 per cent of the employees receiving their claims. The fact that only 37 per cent of the dollar value of the assessments was collected and disbursed, however, suggests that the 5 per cent of the employers who did *not* pay their assessment owed substantial amounts.

As the last two columns of Table 5.4 indicate, the average assessment per employer who was in violation of the Act was $1,961, which would have implied an average compensation of $865 per employee involved in the claim; that is, on average about two employees were involved in each claim. An average of only $756 was collected from employers in violation of the Act, however, implying an average disbursement of $381 per employee involved.

In general, the assessments go uncollected because the employer is no longer in business or cannot be located. More specifically, in descending order of relative importance, the reasons for not collecting the assessments made in 1985-86 were: employer defunct, (33.5 per cent); refuses (26.6 per cent); cannot be located (26.6 per cent); bankruptcy (8.1 per cent); and receivership (5.1 per cent) (Employment Standards Branch, 1985-86 annual report, p. 13). (The refusals are usually owing to the following three reasons: the employer has no money to pay; the employer claims that payment already has been made; the employer feels that there is no legal obligation to pay.)

The previously discussed pattern of small amounts of assessments and collections applies to the standards pertaining to overtime, public holidays, and vacation pay as well as to other standards. Table 5.5 refers to the assessments

Table 5.4

Assessments and Collections for Violations of the Employment Standards Act, Ontario, 1985-86

	Dollar Amount	Number		Average $ Per	
		Employers	Employees	Employer (paid)	Employee (collected)
Complaints and Routine Investigations (17,279 cases)					
Assessed	22,612,068	11,529	26,118	1,961	865
Collected	8,317,541	10,979	21,811	756	381
Ratio collected/assessed	0.37	0.95	0.84	0.39	0.44
Complaint Claims Only (17,177 cases)					
Assessed	22,513,402	11,503	25,853	1,957	871
Collected	8,218,875	10,953	21,546	750	381
Ratio collected/assessed	0.37	0.95	0.83	0.38	0.44
Routine Investigations Only (102 cases)					
Assessed	98,666	26	265	3,795	372
Collected	98,666	26	265	3,795	372
Ratio collected/assessed	1.00	1.00	1.00	1.00	1.00

Source: Ontario Ministry of Labour, Employment Standards Branch, annual report, 1985-86. Figures for routine investigations were calculated by subtracting the figures for complaints only from those for both complaints and routine investigations.

and collections per violation of a standard. Because employers and employees may be involved in the violation of more than one standard, the numbers differ somewhat from those in the earlier tables. Again, the amounts are small, involving collections of only $299 for the violation of an overtime standard, $168 for the violation of the public holidays standard, and $164 for the violation of the vacation pay standard. A higher proportion of assessments is collected under overtime and public holidays standards, largely because they usually do not involve standards pertaining to the bankruptcy or closing down of an organization, where collection obviously is more difficult.

Further Evidence on Noncompliance

The previous discussion suggested that noncompliance was likely to be prominent because the expected monetary cost of violating the Act is small. This cost is the product of three components: the probability of detection, the probability of assessment, and the expected assessment or penalty. With respect to violations of the Employment Standards Act, each of these components is small.

The probability of detecting a violation is likely to be small given the small number of routine investigations and the fact that most complaints come from workers who are no longer with the company. Those who are with the company are likely to be deterred from complaining because of the fear of reprisals, notwithstanding prohibitions in the Act against such reprisals. These prohibitions are simply difficult to enforce, especially in small companies — where employment standards legislation is most relevant. The greatest difficulty is securing evidence relating to a dismissal or reprisal sufficient to lead to a conviction of an employer.

The likelihood of paying unpaid wages does not appear to be a major deterrent, as evidenced by the discrepancy between assessments and collections seen in the tables. This is especially the case for violations of standards associated with the termination of employees or of the company itself. It is, however, a problem primarily associated with a small number (5 per cent) of bankrupt, insolvent, or runaway employers.

Even should the violation be detected and the assessment paid, the expected assessment itself is generally small. It essentially involves compensating workers for their lost wages, with only a potential additional 10 per cent penalty.

In the case of the hours-of-work and overtime provisions, the compliance problem is likely to be compounded by the complexity of many of the regulations in this area. Furthermore, it is often the case that both employers and employees may have an economic self-interest to ignore the legislation on permit and maximum-hours requirements since the employees may want the additional income. The persons who may benefit most by enforcement — the unemployed and those on layoff — have little recourse to try to ensure enforcement.

Evidence on the extent of noncompliance was alluded to earlier, in the statement that about 35 per cent of the *routine* inspections uncovered violations in 1985-86. Further evidence, presented in a background report for the Task Force (Robb and Robb 1987), suggests that noncom-

Table 5.5

Assessments and Collections for Violations of the Employment Standards Act, Overtime, Public Holidays, and Vacation Pay Standards, Ontario, 1985-86

	Dollar Amount	Number[a]		Average $ Per[b]	
		Employers	Employees	Employer (paid)	Employee (collected)
All Standards					
Assessed	22,612,068	18,590	41,196	1,216	549
Collected	8,317,541	17,861	32,812	466	253
Ratio collected/ assessed	0.37	0.96	0.80	0.38	0.46
Overtime					
Assessed	999,863	1,128	3,365	886	279
Collected	945,107	1,162	3,161	813	299
Ratio collected/ assessed[c]	0.94	1.03	0.94	0.92	1.07
Public Holidays					
Assessed	346,703	679	2,283	511	152
Collected	332,347	713	1,982	466	168
Ratio collected/ assessed[c]	0.96	1.05	0.87	0.91	1.10
Vacation Pay					
Assessed	3,550,798	8,140	19,596	436	379
Collected	2,604,620	7,968	15,893	327	164
Ratio collected/ assessed	0.73	0.98	0.81	0.75	0.43

[a] The numbers here refer to the numbers of employers and employees involved in each violation of a standard. Since the same party may be involved in more than one standard being violated, the numbers here will exceed those concerning the violation of one or more standards (see Table 5.4).

[b] For reasons outlined in the above note, these figures refer to averages for violations of each standard. Since the violation of more than one standard is often involved, amounts are less than the average assessment when two or more standards are involved. These latter amounts are presented in Table 5.3.

[c] Collections may exceed assessments in a given year because some collections may be carried over from previous assessments.

Source: Calculations based on data given in Ontario Ministry of Labour, Employment Standards Branch, 1984-85 annual report, p. 19.

pliance has been widespread with respect to obtaining special permits beyond the 100-hours permit and the special industry permits. About 144,300 Ontario workers in 1985 reported in Statistics Canada's Labour Force Survey that they had usual weekly hours in excess of 60. Only these workers are considered (even though permits usually are required for work beyond 48 hours per week), thereby providing a conservative estimate of the extent of noncompliance. Robb and Robb then suggest that some 55 per cent of those working over 60 hours may be exempt because of supervisory or managerial positions. They reduce the number by a further 50 per cent to reflect the other excluded industries or occupations that do not require permits, implying 32,467 workers for whom special permits may be required.

Assuming these 32,467 workers who worked over 60 hours per week averaged a 65-hour week would imply 15 hours of overtime per week beyond the legislated maximum of 50 hours (48-hour maximum workweek plus 2 hours per week from the 100-hour annual permit). This implies total annual overtime hours of about 24 million hours per year (32,467 × 15 × 50 = 24,350,250). Compared with the one million excess hours per year that are allocated under the special permits, this suggests that for every excess hour worked under a permit, 24 excess hours are also worked without a permit. Altering the assumptions of this analysis may change this figure slightly. (For example, if we assume that everyone who worked over 60 hours worked only 61 hours, this would yield 17 excess hours worked without a permit for every hour worked with a permit.) However, as indicated earlier, the figure is likely to be a conservative estimate of noncompliance.

Clearly, noncompliance is likely to be a serious issue with respect to the special permits as well as the hours-of-work and overtime provisions of the Act. In fact, noncompliance is likely to be more prevalent in overtime issues than in other employment standards because employees frequently have a self-interest in not complying: they often want the overtime income. It is extremely difficult to ensure compliance with those elements of employment standards where neither labour nor management has a self-interest in ensuring compliance. This contrasts with other elements of employment standards, such as minimum wages, where workers can have a self-interest in reporting noncompliance.

Although it is beyond the purview of the Task Force to deal with the noncompliance issue for all parts of the Act, it is certainly pertinent to suggest that the issue merits further examination. Answers are needed for a host of questions in this area. To what extent is compliance altered by changing the monetary costs of not complying? What is the optimal combination of the various components of this expected cost (the probability of being caught, the probability of paying a fine if caught, the magnitude of the fine)? What is the cost effectiveness of routine investigations versus following through on complaints versus conducting full audits pursuant to a complaint? To what extent is noncompliance simply a result of misinformation that may be corrected by information dissemination or requirements to post a summary of the relevant requirements under the Act? Answers to these and other questions would help in addressing the general issue of noncompliance.

SUMMARY OF ENFORCEMENT PROCEDURES, NONCOMPLIANCE ISSUES

- *Information on employment standards is disseminated by responding to direct inquiries, distributing publications, and conducting public appearances.*
- *Investigations of complaints are conducted usually by telephone; company visits occur in only about 40 per cent of the cases, with about 30 per cent of these in turn involving a larger audit in connection with other employees and other provisions of the Act.*
- *About three-quarters of the complaints uncover a violation.*
- *Appeals are rare (3 per cent or fewer of the cases), and although most initial decisions are confirmed, about one-third are overturned for both the employee and employer.*
- *There is an asymmetry, however, in that employers can appeal on a wider set of issues and they can appeal to an outside referee, whereas employees can only appeal to a second officer. Furthermore, there is no cost for an employer to request the more expensive outside referee, and this can lead to frivolous appeals. Neither is there a direct monetary cost to employees for possibly frivolous claims.*
- *The various hours-of-work standards pertaining to overtime, public holidays, and vacation pay collectively account for almost half of the dollar value of the amounts collected for violations of the Act.*
- *In 1985-86, however, collections amounted to only 37 per cent of the assessments under the Act, although the proportion collected was much higher for the overtime pay, public holiday, and vacation pay standards than for termination pay and severance pay standards.*
- *Most claimants are employees who are no longer with the company, either because they left or the company is no longer in existence. Rightly or wrongly, employment standards legislation appears to have evolved to deal with the severance of the employment relationship and not with its everyday functioning. This evolution merits serious examination in light of the usual rationale*

of employment standards to provide a safety net or, in some areas, be a leading edge.

- *Routine investigations are becoming increasingly uncommon, but when they occur they uncover violations in about one-third of the cases.*
- *This suggests the possibility of substantial noncompliance with the Act, an observation that is supported by the fact that for every hour worked under a special permit, at least 24 hours also appear to be worked without such a permit.*
- *Noncompliance with overtime provisions may be prominent because the regulations are complex, because neither employers nor employees have a self-interest in having compliance on many issues, and because the fear of reprisals may deter complaints. In addition, the monetary costs of not complying are usually small because assessments are usually not large and the probability of additional penalties is small.*
- *For example, in 1985-86 the average assessed penalty per violation of a standard was only $1,216 per employer. With an average of just over two workers involved in each violation, this implies an assessment of only $549 per worker. Of this, less than half was actually collected, although 95 per cent of employers assessed did pay the amounts owing.*

CHAPTER 6

Legislation in Various Canadian Jurisdictions

Knowledge of the hours-of-work and overtime legislation in other Canadian jurisdictions is important to our study for a number of reasons. These jurisdictions form part of the broader "community norm," which is important to consider from a number of perspectives when establishing employment standards. As a relatively prosperous province, Ontario would not likely want to lag behind the norm of other provinces; on the other hand, exceeding the norm can have negative consequences in terms of Ontario's competitive position with other provinces. An examination of activities of other jurisdictions highlights the range of existing options that prevails as well as innovative arrangements that may be considered. It may also point out trade-offs that are involved among standards; for example, if generous provisions appear in one area, they are offset by less generous ones in others.

By necessity, with so many provisions across 11 jurisdictions, the information is of a summary nature, intended to provide comparisons and capture the basic elements of the legislation, not its intricate detail.

Overtime and Maximum-Hours Legislation

As indicated in Table 6.1, all Canadian jurisdictions require an overtime premium to be paid after a *weekly* trigger, which varies from 40 hours in four jurisdictions, to 44 hours in five jurisdictions (including Ontario), to 48 in two of the smaller jurisdictions. Five jurisdictions (not Ontario) also have a *daily* overtime trigger, at 8 hours. All jurisdictions have their overtime premium set at time-and-one-half, although in the four Atlantic provinces it applies to the minimum wage and not the regular wage and hence, for most workers is a lower premium. British Columbia also has a double-time premium after 11 hours per day or 48 hours per week.

There is considerably more variation in the statutory maximum hours of work. Seven jurisdictions have no limit on the maximum hours of work, and Alberta and Newfoundland have only daily maximums — respectively, of 12 and 16 hours. The federal jurisdiction has only a weekly maximum, of 48 hours per week. Only Ontario has both a daily and weekly maximum, although, as discussed earlier, it is easy to obtain special permission to exceed the daily maximum; only the weekly maximum seems to be enforced. In that sense, Ontario could be said to operate de facto with a weekly maximum of 48 hours.

With minor exceptions, those jurisdictions (the federal jurisdiction, Alberta, Ontario) having an effective maximum-hours limit allow the maximum to be exceeded if there is an accident or emergency, if urgent work to machinery is required, or if there exists a permit system or special regulations for exceeding the maximum. Newfoundland allows its maximum to be exceeded only in case of emergencies; however, it has only a daily maximum, but at 16 hours one that already provides considerable flexibility. In essence, where statutory maximums are required, considerable flexibility usually is allowed through exemptions, permits, or special regulations.

Right to Refuse

The individual right to refuse overtime basically exists only in Saskatchewan, Manitoba, and Ontario. In Ontario, it applies at the maximum hours of work so that in effect it gives individuals the right to refuse even if there are approved compressed workweeks or permits. In Saskatchewan and Manitoba, where there are no maximum-hours limits, the individual right to refuse simply means that all overtime beyond the hours of 8 per day and 40 per week (after which the overtime premium applies) must be voluntary.

Compressed Workweek and Averaging Provisions

Compressed workweek and averaging provisions are designed to provide flexibility by exempting

Table 6.1

Overtime and Maximum Hours Legislation, Canadian Jurisdictions, 1986

	Federal	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Prince Edward Island	Nova Scotia	Newfoundland
Hours After Which Overtime Paid											
Daily	8	8	8	8	8	None	None	None	None	None	None[a]
Weekly	40	40	44	40	40	44	44	44	48	48	44
Overtime Premium	1.5 x regular[b]	1.5 x regular	1.5 x regular	1.5 x regular	1.5 x regular	1.5 x regular	1.5 x regular	1.5 x minimum	1.5 x minimum	1.5 x minimum	1.5 x minimum
Maximum Hours of Work	48/week	None	12/day	None	None	8/day 48/week	None	None	None	None	16/day[c]
Conditions for Exceeding Maximum Hours	Accident, emergency or breakdown in machinery Permit	No maximum	Accident, urgent work to plant or machinery, or other unpreventable circumstance Permit Special regulation	No maximum	No maximum	Accident, or urgently required work to machinery	No maximum	No maximum	No maximum	No maximum	Emergency that constitutes an imminent hazard to life or property
Right to Refuse	None	None	None	44/week	8/day 40/week	8/day 48/week	None	None	None	None	None
Compressed Workweek or Approved Averaging, Requiring Director's Approval	Yes, with employee's consent, up to 10 hours/day, 4 days/week; 48 hours/week maximum for averaging	Yes	Yes	Yes, with union consent, up to 10 hours/day, 4 days/week	Yes, up to 10 hours/day, 4 days/week	Yes, up to 12 hours/day, 48 hours/week	Yes[d]	No	No	No	No

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[a] 8 and 40 in retail and wholesale shops.

[b] 2.0 x regular after 11 hours per day or 48 hours per week.

[c] The implied weekly maximum is 96 hours.

[d] Or by collective agreement.

Source: Labour standards legislation of each jurisdiction.

employers from maximum-hours-of-work requirements and often from the requirement to pay an overtime premium. Most jurisdictions that have effective maximum-hours requirements (the federal jurisdiction, Ontario, and on a daily basis only, Alberta), have such provisions, and all require the approval of the administrative agency (for example, Director, Labour Standards Board, Minister of Labour). Some jurisdictions without a maximum-hours-of-work requirement (British Columbia, Saskatchewan, Manitoba, Quebec) also allow approved compressed workweek or averaging provisions, basically to exempt employers from the overtime premium and the right to refuse overtime if it applies. The Atlantic provinces do not have compressed workweek or averaging allowances, basically because most do not have maximum-hours requirements; employers can simply establish compressed workweeks. Also, the need to provide such exemptions from the overtime premium is minimal because the premium is minimal or nonexistent, at one-and-one-half times the minimum wage, not times the employee's regular wage. Similarly, exempting compressed workweeks or averaging arrangements from the individual right to refuse is nonexistent because that right is nonexistent.

Although allowing exemptions for approved, compressed workweeks, the federal jurisdiction, Manitoba, and Ontario do provide limits on those schedules. Specifically, the federal jurisdiction and Manitoba allow compressed workweeks only up to 10 hours per day for 4 days per week (in effect, allowing up to a 40-hour week in 4 days). Ontario allows up to 12 hours per day and 48 hours per week (in effect, allowing a 4-day week up to 12 hours per day). Saskatchewan and Quebec also allow compressed workweek and averaging provisions — if they are mutually agreed-upon by the employer and the union. In the federal jurisdiction, the schedules must have union consent or approval of 80 per cent of unorganized employees.

Exemptions and Special Treatment

All jurisdictions exempt certain groups from their employment standards legislation in general, or hours-of-work provisions in particular. In addition, some provide special treatment for particular groups. Given the complexity of each case (as exemplified in Chapter 4 for Ontario alone), it is not possible to offer a precise statement of the exact differences across jurisdictions. Table 6.2 is designed, however, to indicate the types of employees that are typically not covered by the usual hours-of-work and overtime provisions in each jurisdiction.

In the Atlantic provinces (with the exception of Nova Scotia), few workers are exempt, largely because the legislation itself is not very stringent; there are no effective maximum-hours requirements, and the overtime premium is only one-and-one-half times the minimum wage, not times the employee's regular wage. In the other jurisdictions, including Ontario, common exempt groups are managers and supervisors, professionals, domestics, travelling salespersons, and persons engaged in fishing and agriculture.

The more extensive list of exemptions for specific hours-of-work and overtime provisions and the special regulations for Ontario are not as common across the other jurisdictions. In large part, this reflects the fact that Ontario has maximum-hours-of-work requirements; hence, many of its exemptions pertain to those requirements.

Rest Periods, Annual Paid Vacations, and Paid Holidays

Table 6.3 provides a comparison, among Canadian jurisdictions, of statutory requirements for rest periods, annual paid vacations, and holidays with pay. Most jurisdictions require a weekly rest period of at least 24 consecutive hours, which basically means that at least one full day of rest is required per week. British Columbia requires a 32-consecutive-hour rest period, although that can be waived if a double-time premium is paid. Only Ontario and Prince Edward Island do not require a weekly rest period. In Ontario, however, this is de facto accomplished in most situations through the maximum workweek of 48 hours. Nevertheless, it is possible that employees may never have a consecutive rest period of 24 hours if, for example, they work six 7-hour days and one 6-hour day.

All jurisdictions require at least 2 weeks' annual paid vacation after one year of service with the company. In Ontario, Alberta, and the Atlantic provinces, this is the only requirement. The other jurisdictions typically have an additional requirement of 3 weeks' paid vacation after the following number of years of service: 5 (British Columbia, Manitoba), 6 (federal), and 10 (Quebec). Saskatchewan has the most stringent requirement: 3 weeks' paid vacation after one year of service, and 4 weeks' after 10 years of service.

As indicated in Table 6.3, all jurisdictions except Prince Edward Island specify a number of annual holidays with pay, ranging from 5 in Newfoundland and Nova Scotia to 9 in the federal jurisdiction, British Columbia and Saskatchewan. The simple average number of such holidays (excluding Prince Edward Island) is 7.1 which is fairly similar to the 7 days for Ontario.

The 4 paid holidays common to all jurisdictions are Labour Day, Good Friday, Christmas, and New Year's Day. Other typical holidays include Victoria Day, Thanksgiving (except in the Atlantic provinces), Dominion Day/Canada Day (except in Quebec and Newfoundland).

Table 6.2

Exemptions and Special Treatment Under Labour Standards: Canadian Jurisdictions, 1986

Jurisdiction	Occupation/Industry
Federal	Management employees Licensed professionals Other: Regulations exempt or establish different standards for certain industries or occupations in certain industries; e.g., highway drivers, trucking, running trades, railways, shipping, country grain elevators, employees on board ships
British Columbia	Managers Teachers Commercial travellers School bus drivers Watch guards Farm workers Domestics Other: Regulations exempt or establish different standards for certain industries
Alberta	Managers or supervisors Registered or licensed professionals Most salespersons Farm workers Domestics Employees covered by other legislation Other: Special regulations for ambulance drivers and attendants, field services, highway and railway construction and brush clearing, irrigation districts, nursery industry, oil well servicing, taxis, trucking
Saskatchewan	Managers Licensed professionals Employees of a rural municipality engaged in road maintenance and construction Other road construction workers Commercial travellers Teachers Farm workers Logging industry employees, except office Crown employees
Manitoba	Licensed professionals Most travelling salespersons (hours-of-work exemption only) Independent contractors Fishing Farm workers Domestics
Ontario	Managers and supervisors Licensed professionals Teachers Domestics Most travelling salespersons Commercial fishing Farm workers Firefighters Guides Construction workers (hours-of-work exemption only) Gardeners Homeworkers Resident caretakers Residential careworkers Students working with children (overtime exemption only) Taxi drivers (overtime exemption only) Seasonal workers at motels, etc. (hours exemption only) Other: Special regulations for various groups
Quebec	Executive officers Students employed in a nonprofit recreational organization Employees working outside an employer's establishment whose working hours cannot be controlled Employees of certain industries; e.g., harvesting, canning, packaging, fishing, farmwork Employee whose main duty is the care, in a dwelling, of a child, or of a disabled, handicapped, or aged person, not for profit Students working pursuant to a job-induction program Construction industry — organized portion
New Brunswick	None except that "employee" does not include independent contractor
Prince Edward Island	Ambulance drivers Agricultural workers
Nova Scotia	Managerial, supervisory, or confidential positions Teachers Farm workers Domestics Registered or licensed professionals, or students in training for professions Persons employed at a nonprofit summer camp or playground Most salespersons Persons working on fishing vessels Other: Regulations exist exempting or establishing different standards for certain employees; e.g., truck drivers
Newfoundland	Management employees Employees in prescribed undertakings Farm workers Domestics Ministerial exemptions

Note: Lists are not necessarily comprehensive.

Source: Labour standards legislation of each jurisdiction.

Remembrance Day is a paid holiday in the federal jurisdiction, British Columbia, Alberta, Saskatchewan, and Nova Scotia. The federal jurisdiction also requires Boxing Day; Newfoundland requires Memorial Day; and British Columbia, New Brunswick, and Saskatchewan each have a separate holiday in honour of their respective provinces.

Table 6.3

Rest Periods, Annual Paid Vacations and Holidays, Various Canadian Jurisdictions, 1986

Jurisdiction	Weekly Rest Period (Consecutive Hours Per Week)	Annual Paid[a] Vacations (No. Weeks/ No. Years Service)	Annual Public Holidays With Pay
Canada Federal	24	2 after 1 3 after 6	9
British Columbia	32[b]	2 after 1 3 after 5	9
Alberta	24	2 after 1	8
Saskatchewan	24[c]	3 after 1 4 after 10	9
Manitoba	24	2 after 1[d] 3 after 5[d]	7
Ontario	None[e]	2 after 1	7
Quebec	24	2 after 1 3 after 10	6
New Brunswick	24	2 after 1[f]	6
Prince Edward Island	24[g]	2 after 1[h]	Not prescribed[i]
Nova Scotia	24	2 after 1[j]	5[k]
Newfoundland	24	2 after 1[l]	5

[a] Where employment is terminated before one year, employees are generally entitled to 4 per cent of annual earnings in all jurisdictions except Saskatchewan, where it is 6 per cent. Not entitled to vacation pay: employees who do not complete 5 working days of employment in British Columbia; and employees who work for 24 hours or less per week in New Brunswick and Prince Edward Island.

[b] Two times the regular wage must be paid for all hours worked during the duty-free period.

[c] Applicable to employees who are usually employed for 20 hours or more in a week.

[d] Two weeks after one year if an employee has worked for not less than 95 per cent of the regular working hours during a continuous 12-month period; 3 weeks after 5 years provided the 95 per cent rule is satisfied for a given year *and* the employee has worked at least 50 per cent of the regular working hours in each of the 4 years in the preceding 10 years.

[e] Under The One Day's Rest in Seven Act, employees of a hotel business, restaurant or café in a city or town with a population of 10,000 or over are entitled, with certain exceptions, to 24 consecutive hours of rest in every 7 days.

[f] Applicable to employees working more than 24 hours per week. Employees must work at least 19 days per calendar month to earn a vacation credit for that month.

[g] Under The Day of Rest Act, employees are entitled to one day off in 7; where possible, that day should be Sunday.

[h] Applicable to employees working more than 24 hours per week and at least 90 per cent of the regular working hours within a continuous 12-month period.

[i] Established under Industrial Standards Schedules in a given trade (e.g., carpentry, 1973; electrical, 1969; plumbing, pipefitting, and sheetmetal, 1969).

[j] Applicable to employees who work for at least 90 per cent of the regular working hours during a continuous 12-month period.

[k] In addition to 5 days per year, a day specified as a general holiday in a Regulation under the Labour Standards Code, from time to time. Does not include Remembrance Day under the Remembrance Day Act since The Act does not oblige the employer to pay an employee not working on that day.

[l] Applicable to employees working at least 90 per cent of the normal working hours in any continuous 12-month period.

Source: Labour standards legislation of each jurisdiction.

Ontario's Relative Position

It is difficult to rank the jurisdictions in terms of being more stringent or less stringent in their overtime and maximum-hours regulations because they are not consistently so across all the overtime and maximum-hours dimensions. It appears, however, that Ontario is neither a leading nor a lagging jurisdiction with regard to its overtime and maximum-hours requirements. The federal jurisdiction is somewhat more stringent, having a weekly trigger of 40 hours and a daily trigger of 8 hours as well as more liberal paid vacations and paid holidays. It has only a weekly maximum (the same as Ontario's), however, and no daily maximum.

In contrast, labour standards in Quebec and New Brunswick are less stringent than in Ontario because they have the same weekly trigger but no statutory maximum. The same is the case in Newfoundland, except that it has a daily overtime trigger in retail and wholesale shops and a daily maximum, although the latter is not until 16 hours. Nova Scotia and Prince Edward Island are clearly less stringent, having a higher weekly trigger, a lower overtime premium (based on the minimum wage, as in the other Atlantic provinces), and no maximum hours of work.

British Columbia, Saskatchewan and Manitoba, which have similar requirements, are more difficult to compare with Ontario. They have a daily trigger at 8 hours and a weekly trigger at 40 hours. Although their overtime premium applies earlier than in Ontario, which has a weekly trigger of 44, none of these three provinces have a maximum-hours-of-work criterion. Manitoba has the most stringent right to refuse overtime, followed by Saskatchewan and then Ontario, with British Columbia and the other provinces having no right to refuse overtime. Alberta also has a daily trigger, but it has only a daily and not weekly maximum.

Thus, it appears that Ontario could be labelled as lagging behind the federal jurisdiction with respect to its overtime and, hours related standards, and leading Quebec and the Atlantic provinces. Comparisons with British Columbia, Saskatchewan, Manitoba, and Alberta are more difficult to make, in part because the former three provinces have followed a policy of discouraging overtime through simply applying the overtime premium after an earlier trigger, with no maximum-hours-of-work restrictions.

The preceding analysis highlights an important distinction in the approaches of the various jurisdictions. Basically, British Columbia, Saskatchewan, and Manitoba have followed what could be labelled a "market-oriented" solution to regulating overtime. That is, they simply had the market overtime premium apply earlier as a way of discouraging overtime. This allows the parties to utilize overtime, subject to that penalty premium rate but not to further regulatory requirements (for example, the requirement to obtain a permit or pay a special premium to work beyond certain maximum limits). This solution, using market prices (the overtime premium) rather than regulations, also prevails in Quebec and the Atlantic provinces, except that the overtime premium does not apply until after a longer workweek.

In contrast, Ontario and the federal jurisdiction have followed a mixture of a market-oriented system (based on overtime penalties) and a regulatory model (based on maximum-hours regulations), allowing exceptions and using permits for exceeding the regulatory maximum. Alberta also follows the mixed approach, although only with regulations on daily maximums.

SUMMARY OF LEGISLATION IN CANADIAN JURISDICTIONS

- *All Canadian jurisdictions require an overtime premium of time-and-one-half after a* weekly *trigger of 40, 44, or 48 hours per week. Six jurisdictions (not Ontario) also have a* daily *trigger at 8 hours. Only British Columbia has a double-time premium, after 11 hours per day or 48 hours per week.*
- *Most jurisdictions have no limit on maximum hours of work (and hence no complicated exemption or permit system for exceeding that maximum). Two jurisdictions have only daily maximums (of 12 and 16 hours), and two have only weekly maximums (of 44 and 48). Only Ontario has both a daily and weekly maximum (of 8 and 48, respectively); however, it is easy to secure permission to exceed the daily maximum, and only the weekly maximum appears to be enforced.*
- *The individual right to refuse overtime basically exists only in Saskatchewan, Manitoba, and Ontario.*
- *Ontario tends to have more exemptions and special regulations than do other jurisdictions, in large part because Ontario has maximum-hours-of-work requirements.*
- *At seven, the number of statutory holidays with pay in Ontario is slightly lower than the average in other jurisdictions.*
- *Overall, it appears that Ontario lags behind the federal jurisdiction with respect to most overtime and hours related standards, and leads Quebec and the Atlantic provinces. Comparisons with British Columbia, Saskatchewan, Manitoba, and Alberta are more difficult to make, in part because the former three provinces follow a policy of discouraging overtime through simply applying the overtime premium after an earlier trigger and have no maximum-hours restrictions.*

CHAPTER 7

European Experience

The European experience on hours of work and overtime is of particular interest because government policy has run the gamut from no intervention (United Kingdom) to extensive restriction on overtime (Sweden). Also, in recent years many European countries have followed a conscious policy of reducing hours of work as a form of worksharing, although these policies are not necessarily clear in the *legislative* comparisons provided in this chapter. This has occurred in numerous forms including reductions in the standard workweek, implementation of early retirement policies, and, often, restrictions on the use of overtime (Cuvillier 1984, p. 1). These policies have largely been in response to problems of unemployment, especially youth unemployment.

It is not surprising that among experts there is little consensus on the relevance of European hours of work practices for North America, given the dramatic differences in social, political, and economic environments. For example, European countries tend to have more centralized collective bargaining structures (with the notable exception of the U.K.), with fairly strong trade unions. Important labour market decisions are often made centrally at a high level, a tripartite process that is also used to shape social policy. This type of structure facilitates a more coherent response to such issues as worksharing to combat unemployment. European countries also tend to be more skeptical about the viability of market mechanisms to solve social problems like unemployment. Hence, government intervention and regulation of the economy are more common than in North America, again paving the way for a more collective response to regulate working hours as a way of combatting unemployment.

The more extensive government intervention in the labour market, especially with respect to the termination of employees, also implies that European firms may want to use overtime to meet short-run demand increases rather than hiring new employees and incurring the expected termination costs. The availability of "guest workers" and the more extensive institutional training systems, however, shows that alternatives to overtime are readily available.

Whether the experience of European countries is relevant or not to North America, it is instructive to analyze their response of restricting hours in the hope of creating new jobs and hence reducing unemployment. This issue is a much more prominent part of the policy agenda in Europe than in North America, partly because of the lack of job creation from other sources. Therefore, an examination of the policy debate that has gone on in Europe over this broader issue of restricting worktime to reduce unemployment may be instructive in determining whether restrictions on overtime in Ontario may lead to job creation. As well, it puts the overtime issue in the broader perspective of reductions in worktime in general, a policy with which Europe has much more experience.

This chapter draws extensively on a background report prepared for the Task Force by Klaus Weiermair: *Hours of Work and Overtime: The European Experience*, which in turn draws on material from the International Labour Organization as well as a body of European sources. The report, which deals with European and (to a lesser extent) Japanese experiences with hours-of-work and overtime issues, also provides information on employer and employee attitudes toward overtime as well as background on the recent European debate on the employment-creating potential of reductions of overtime — both subjects of later chapters. The European efforts at reduced worktime are also discussed extensively in Cuvillier (1984), Hart (1984), and Kaeding (1986) — all of which are drawn upon in this chapter.

Hours-of-Work Patterns

Differences in data collection and definitions make hours-of-work comparisons across countries extremely difficult. Nevertheless, some rough comparisons can be made with a reasonable degree of accuracy.

As pointed out in Weiermair's study (1987, Table 1), in Canada, average weekly hours of work declined slightly from 40.4 hours in 1960 to 38.4 in 1983. Over that same period, in most European economies, hours went from a higher level in 1960 to a similar or even lower level in 1983. For example, in Sweden, between 1960 and 1983, average weekly hours decreased from 47.2 to 37.7; in Austria from 43.5 to 36.7; in France from 45.7 to 38.9; and in West Germany from 46.7 to 40.8. In Japan they decreased from 47.8 to 41.1 hours. In essence, the recorded reduction in average working hours in Europe and Japan has tended to be much larger than in Canada.

The extent to which this reflects a conscious policy to combat their rising unemployment, or to which these reductions are simply a manifestation of the general conditions that gave rise to that unemployment, remains unanswered. Although unemployment rates in Canada almost doubled over the period 1960 to 1983 (from 6.5 to 11.9 per cent), the increase in most European countries was much more dramatic (from 1.1 to 7.3 per cent in West Germany, from 1.6 to 8.8 per cent in France, from 2.1 to 13.4 per cent in the United Kingdom). In all likelihood, the reduced hours of work were both a manifestation of worsening economic conditions and a response to them.

The pattern of overtime hours itself over that period is more difficult to establish given data limitations across countries. In general, however, the average number of overtime hours per worker (averaged over all workers, not just over those who work overtime) is higher in European countries and Japan than in Canada. In Canada, the typical figure is slightly less than one hour of overtime per week per person, and it has been fairly constant between 1975 and 1983. In contrast, in West Germany and France, average weekly overtime during this period was in the range of two to three hours, although declining quite rapidly. In Japan, the figures are in the range of three to four hours and rising, and in the United Kingdom they are by far the highest, being closer to five to six hours per week and falling slightly. For the Netherlands, Sweden, and Denmark, the weekly figures are in the one-hour range, as they are in Ontario, although the amount of such overtime tends to be falling in these countries, as it is throughout Europe. In contrast, it is constant or increasing slightly in Ontario.

The anomalous situation of the large amounts of overtime worked in the United Kingdom has never been adequately explained in the literature. It appears to have become a regular part of the system, with overtime being worked by the same people in the same firm for an extended period (Whybrew 1968, p. 19). This may reflect the decentralized bargaining structure that makes it difficult to establish a national accord to restrict overtime as a form of worksharing. It may reflect the relative absence of government regulations against overtime and the low overtime premium, or a concentration of occupations and industries for which overtime is common in most countries (although, as shown subsequently, overtime tends to be disproportionately high in most occupations and industries in the United Kingdom). The situation may also reflect disproportionately high fixed costs of hiring and training new workers or their need to supplement low wages, although it is not obvious why this should be the case more so in the U.K. than in other European countries. The relative importance of these or other possible explanations for the large amount of overtime in the United Kingdom remains an interesting and important area for further research.

Data presented in Weiermair (1987, Table 2) indicate that the considerable international variation in the use of overtime is not simply a reflection of differences in the relative importance of the industries and occupations that use different amounts of overtime. The United Kingdom uses high amounts of overtime in all sectors, yet Sweden, for example, tends to use much less overtime in all sectors.

Regulating Hours of Work and Overtime

As illustrated in the Appendix table at the end of this chapter, overtime is typically regulated by both statute and by collective agreements, with only Denmark and the United Kingdom having no statutory regulations on overtime. The statutory standards generally set minimum standards for overtime, with collective agreements often setting more stringent standards such as higher overtime premiums and earlier triggers after which the overtime premium applies.

Most European jurisdictions provide for a statutory 8-hour working day, allowing up to an additional 2 hours of overtime at an overtime premium rate. These same countries typically provide for a weekly maximum of 10 hours of overtime. Considerably greater variation exists in the upper limits of overtime over longer periods of, say, one, 2, or 3 months or one year. For example, annual restrictions vary from 60 hours (Austria), 130 hours (France), 200 hours (Sweden), 240 hours (West Germany), and no annual constraints (Italy, Japan). In essence, European jurisdictions typically allow for overtime but restrict its magnitude on a daily basis (2 hours), weekly basis (10 hours), and annual basis (60 to 240 hours).

Where they exist, statutory overtime premiums in Europe are typically only 25 per cent, with Austria having a higher and Italy a lower premium. Collective agreements often set a higher premium, usually 30 to 50 per cent, with considerable variation across industries. Higher rates are typically set for nightwork, Saturday, Sunday, and holiday work, with the premium ranging from 50 to 100 per cent.

Compensatory time-off arrangements are common in many European jurisdictions. In addition to the legislated overtime premium, France requires an additional bonus of 20 per cent compensatory time-off for each hour beyond the normal workweek up to 48 hours, and 50 per cent compensatory time-off after 48 hours. In West Germany and the Netherlands, compensatory time-off arrangements are also common in collective agreements and practice. Weiermair (1987) also indicates that there have been a number of recent government initiatives in countries including Belgium, West Germany, and Sweden to regulate overtime through time-off compensation schemes. Such schemes have particular appeal as a worksharing device because when the time-off is taken, new jobs may be opened, if only on a temporary basis.

Restrictions on hours of work and the amount of overtime that can be worked by special "protected" groups are relatively common in European jurisdictions and Japan. Such special provisions often apply for minors and young workers (West Germany, Austria, United Kingdom, Italy, France, Denmark, Netherlands); pregnant women and nursing mothers (West Germany); mothers of young children (Italy); women in general (Austria, United Kingdom, France, Netherlands, Japan); disabled workers (West Germany); part-time workers (Italy, Sweden); and workers in hazardous jobs (Japan).

Exemptions from Overtime Restrictions

Given the heavy emphasis in European countries on regulating the amount of overtime worked, it is not surprising that numerous exemptions are also provided, thus allowing some flexibility. As discussed in Chapter 3, when Ontario introduced the 8-hour day and 48-hour week maximum in 1944 (a change that would affect more than half the workforce), it was necessary to introduce numerous exemptions to achieve flexibility. In essence, exemptions and special provisions are characteristic of systems that attempt to restrict overtime by introducing regulations on the maximum amount of its use (for example, through quantity restrictions), rather than by simply discouraging its use (for example, through price restrictions).

In Europe, exemptions are often obtained through special permits granted by labour inspectors, health and safety councils, or administrative agencies within labour ministries. Also, numerous industries and groups of workers (many similar to those in Ontario) are exempt, as are emergency situations, and some countries offer averaging or flexible worktime arrangements. In essence, the situation is not unlike that in Ontario, with its exemptions for certain groups, its averaging provisions, and its permit system.

In Japan, few exemptions are necessary given the limited restrictions on the use of overtime in the first place. Labour ministry guidelines suggesting maximum amounts of overtime are issued to influence collective bargaining; however, these are not always followed. Even the limited restrictions that do exist (for example, on overtime for female workers) are softened through a long list of exceptional circumstances and exclusions (the service sector, for example, is excluded).

Information and Co-determination Requirements

Relative to North America, European countries tend to have more open-information requirements as well as requirements for involvement by unions or works councils in labour standards issues, including those addressing hours of work and overtime. This practice is facilitated by their more centralized bargaining structure as well as tripartite involvement in many social issues.

For example, in Sweden, employers must notify the local union before emergency overtime is worked, and they must keep accurate records on overtime and make those records available to employees or their representatives. Overtime is subject to bargaining through Swedish co-determination laws, which means that through the system of national collective bargaining, unions have a substantial say in overtime issues. In Austria, extensions to the legislated maximum amounts of overtime can be allowed through collective agreements or permission from the labour inspectorate after consultation with worker representatives. In West Germany, the works council has a veto on all matters relating to working-time arrangements, and special prior authorization is required if more than two hours of overtime per day is to be worked. In France, overtime hours above the annual limit can be worked only with permission from the labour inspectorate and after consultation with union representatives. Flexible worktime arrangements, which are encouraged through a central framework agreement, require permission of the relevant works council.

Recent European Developments on Hours of Work and Overtime

In the past, the European emphasis on reducing worktime in general and overtime in particular has been rationalized on the basis of improving work conditions. That is, increased leisure time was seen as a desirable objective to be fostered by public policy, as necessary. In this as in many other areas, European governments have often been strongly interventionist, not entrusting markets to yield what could be considered the socially optimal mix of leisure time and worktime.

In recent years, however, the rationale for reduced worktime has changed to one of worksharing to create employment and reduce unemployment, especially youth unemployment. European unions have tended to be in the vanguard of that movement, both in their own collective bargaining and in influencing legislation and social policy. They are able to do so on both fronts because of the high degree of centralized bargaining (except for the U.K.), the prevalence of works councils as a permanent apparatus, the high degree of unionism itself, and their own frequent involvement as a social partner in a tripartite structure. These characteristics of European trade unionism facilitate dealing with issues of worksharing through the ongoing dialogue between unions and employers as well as between unions and governments.

Most European unions are currently pushing for a reduction in the normal workweek from its current level of about 40 hours (where it has tapered off for some time) to 37 hours, with a longer-term goal of achieving a 35-hour week by 1990. In general, the "breaking" of the "sacred" 40-hour week has been achieved in select industries in certain countries, often after prolonged strikes. For example, the German metalworkers won the 38.5-hour week (effective April 1, 1985) after a strike in 1984. Similar breakthroughs were made in the engineering and printing industries in West Germany, and in engineering and railways in the Netherlands. Whether these are exceptions or harbingers of things to come remains an unanswered question.

In Europe, overtime restrictions are only one form in which hours-of-work reductions are being fostered in the hope of sharing the available work. In fact, reductions in the normal or standard workweek have held out more promise, mainly because they would apply to the majority of the workforce while overtime restrictions apply only to those few who work overtime on a regular basis. Other forms of reduced worktime that have been emphasized in Europe include earlier retirement, increased vacations, and increases in the compulsory school age. Flexible worktime schedules have also received considerable attention in Europe, although it is not always clear that they would lead to reduced worktime as opposed to accommodating heterogeneous preferences.

A number of recent developments in Europe illustrate the innovative hours-of-work arrangements that have been undertaken or proposed. In 1982, France introduced solidarity contracts whereby, in participating firms, the hiring of new employees was subsidized provided that the firms reduced the working hours of existing employees (Hart 1984, p. 51). Specifically, for new recruits over and above the existing workforce, employers were to be totally or partially exempt from making social welfare payments. Such marginal employment subsidies were given on the condition that the firm reduced the hours of all or part of its workforce by at least 2 hours, resulting in a basic workweek of 37 hours by January 1983 or 36 hours by September 1983. Similar subsidies were available to firms that provided for early partial or full retirement for its older workforce.

Although never adopted, an innovative scheme to restrict overtime was proposed in 1978 by the European Economic Community Commission. A number of alternative proposals were set forth, all basically involving the principle that only a certain number of overtime hours can be compensated by money payment. Overtime worked above the quota *must* be compensated in the form of compensatory time-off, also termed "time-off in lieu." One proposal included quotas of 90 or 120 hours per year that can be compensated by overtime payments, after which time-off in lieu is mandatory. An alternative proposal suggested a sliding scale: compensation for 40 to 42 hours per week at 75 per cent money payment and 25 per cent time-off in lieu; compensation for 42 to 45 hours at 50 per cent payment and 50 per cent time-off in lieu; compensation for 45 to 48 hours at 25 per cent payment and 75 per cent time-off in lieu; and compensation after 48 hours exclusively at time-off in lieu.

The Commission proposed an alternative set of overtime restrictions with overtime quotas of about 25 hours per quarter, below which the statutory overtime premium would apply and above which compensatory time-off in lieu would be required at the straight-time rate, unless a higher rate were prescribed in a collective agreement. The Commission also proposed an absolute maximum workweek.

Although the European Trade Union Confederation gave cautious support to the Commission's proposals — it remained concerned that the control of overtime not be taken out of collective bargaining — the proposals of the Commission have not been adopted. Presumably there is not agreement among the member countries about the job-creating potential of restrictions on overtime, or of the desirability of requiring compensatory time-off in lieu. Still, the policy is being seriously considered in member states such as West Germany (Kaeding 1986, p. 48).

European countries have generally not expressed much interest in the notion of raising the statutory overtime premium as a way of discouraging overtime. Perhaps this approach is part of their proclivity toward a more interventionist regulatory solution rather than a market-oriented solution that emphasizes the raising of prices. An exception is a recent legislative proposal by the West German state of North Rhine Westphalia. That proposal would impose an overtime premium of double time and a cancellation of tax deductibility for overtime pay on the part of employers (Kaeding 1986, p. 48).

Clearly the debate over the desirability of reducing hours of work and overtime in the hope of creating jobs is more active in Europe than in North America. As well, the policy responses have been more varied and interventionist in nature. For that reason, the European situation is well worth watching.

SUMMARY OF EUROPEAN EXPERIENCE

- *The European experience is of particular interest because government policy ranges from no intervention (the United Kingdom) to extensive restriction on overtime (Sweden). Also, many European countries are following a conscious policy of reduced worktime to create jobs to reduce their youth unemployment.*
- *There is legitimate debate over the relevance of the European experience to North America, given Europe's more centralized bargaining structures and stronger emphasis on regulation and intervention in labour markets.*
- *In most European countries, hours of work have declined even more rapidly, and have reached a lower level, than in North America. Overtime hours, however, are usually greater in Europe and Japan than in Canada, although they are falling in Europe and rising in Japan. The United Kingdom is an exception, having large amounts of overtime worked on a regular basis.*
- *Although Denmark and the United Kingdom have no statutory regulation of overtime, most other European countries require an overtime premium of only time-and-one-*quarter *after 8 hours per day. The premium is paid after weekly hours which vary from 40 to 48, depending on jurisdiction. They allow only up to 2 hours of overtime per day and 10 hours per week, and impose annual limits ranging from 60 to 240 hours.*
- *Collective agreements, which are often national in scope, usually set a higher overtime premium (usually 30 to 50 per cent) and have higher rates for nightwork, and weekend or holiday work.*
- *Compensatory time-off arrangements are common in Europe.*
- *Given the heavy emphasis in Europe on regulating hours of work and overtime, exemptions are quite common to provide a degree of flexibility.*
- *In Europe, union involvement in overtime issues is usually required before permission is granted to work overtime.*
- *European economies have recently emphasized worksharing by various forms of worktime reduction: the reduced standard workweek, overtime restrictions, earlier retirement, increased holidays, and increases in the compulsory school age. They have also introduced some innovative arrangements, such as subsidies to the hiring of new employees conditional upon firms reducing the working hours of existing employees (France). Requirements that all overtime be compensated in the form of compensatory time-off have been proposed but not adopted.*

Appendix Table 7.1

Overtime Regulation in Selected Industrialized Countries: International Labour Organization Summary

Country	Normal Hours Per Week	Overtime Premium	Maximum Hours	Conditions for Exceeding Maximum	Collective Agreements and Practice
Austria	40	50%	5 overtime/ week[a] 60 overtime/ year	Only if not contrary to workers' legitimate interests. Special provisions for young workers and pregnant women and nursing mothers. Prior authorization of labour inspectorate required for overtime in excess of maximum-hour limits, accorded only where the work is in the public interest.	**Steel and metal workers — Premium**: 50% for first 2 hours; 100% thereafter and after 19:00; 100% on public holidays. **Conditions**: Employer must consult works council; workers may refuse to work overtime when contrary to their interests.
Canada	40[b]	50%	48/week	Any employer, whether or not the employees normally work irregular hours, may apply for a ministerial permit, which increases the standard and maximum hours in a week, provided that over such period of weeks as are stated in the permit the average standard hours do not exceed 40 per week and the average maximum hours do not exceed 48 per week.[c]	—
Denmark	—[d]	—	—	—	**Premium**: 50% during the week; 100% on Sundays, national or religious holidays, or compensatory leave. **Textile industry** — 50% for the first 2 hours; 100% thereafter.[e]
France	39	25% the first 8 hours; 50% thereafter	10/day; 48/week;[f] 130 overtime/ year[g]	Notification of labour inspectorate and works committee or workers' delegates. Prior authorization of labour inspectorate for overtime above annual limit after consultation with works committee or staff delegates. Compensatory leave equal to 20% of overtime worked above 42 hours per week and equal to 50% of overtime worked above 130 hours per year.	**Maximum**: Lower annual limits in some branches and undertakings (e.g., 94 hours per year in the metalworking industry).
West Germany	48	25%	10/day 30 days/year	Prior authorization of works committee when overtime concerns more than one worker. Prior authorization from labour inspectorate for overtime above maximum.	**Premium**: 50% stipulated in many collective agreements. Compensatory leave provided for in some collective agreements (e.g., public services, clothing industry, breweries).

Note: Table provides an overall summary based oh information available to the ILO in 1983 and does not contain all facts and special regulations. Dashes mean that no relevant provisions were found.

[a] Collective agreements may permit 5 additional hours (10 additional hours may be permitted by collective agreements for drivers or for workers employed in the hotel industry or in communications).

[b] Canada Labour Code, which applies to employees in undertakings within the federal jurisdiction and Labour Acts of several provinces (British Columbia, Manitoba, Saskatchewan).

[c] Under federal legislation (Canada Labour Code). Similar provisions apply in several provinces.

[d] Hours of work are regulated through collective agreements. As a general rule, the law provides that workers are entitled to at least 11 hours' daily rest.

[e] A number of collective agreements regulate maximum limits and conditions concerning overtime. For example, some provide that overtime work should be avoided as far as possible; others contain a direct ban on overtime; several provide for an agreement between the employer and the worker.

[f] Weekly maximum of 46 hours on average over a 12-week period.

[g] Lower or higher limits may be determined by a collective agreement or arrangement that has been extended.

[h] Based on guidelines provided by the Ministry of Labour. *Maximum*: 15 hours for one week; 28 hours for 2 weeks; 39 hours for 3 weeks; 48 hours for 4 weeks; after 4 weeks, 12 hours per week up to 12 weeks, 50 hours for one month; after one month, 50 hours per month up to 3 months.

[i] Through the application of annual working hours limits (payment for overtime being due when hours are worked above this annual limit).

Country	Normal Hours Per Week	Overtime Premium	Maximum Hours	Conditions for Exceeding Maximum	Collective Agreements and Practice
Italy	48	10%	2 overtime/day 12 overtime/week	Prior notification of labour inspectorate.	Varies according to sector. **Metal-working industry — Premium**: 25% during weekdays to 75% on Sundays and holidays. **Iron and steel industry — Maximum**: 2 hours per day. **Commercial sector — Premium**: 15% (41st to 48th hour per week); 20% after 48 hours; 30% on public holidays; 50% at night. **Maximum**: 200 hours per year. **Conditions**: Agreement of works council usually required.
Japan	48	25%	2 overtime/day for underground and dangerous work	An agreement between the employer and workers' representative is required.[h]	—
Netherlands	48	0%	**In general** Men: 11/day 62/week Women: 10/day 55/week	Prior authorization from the district employment office for hours worked over 48 per week.	**Premium**: 25% for the first 2 hours; 50% thereafter. Several agreements provide for compensatory leave.[i] **Conditions: Construction** — overtime not allowed for worker over 55 years of age; prior consultation with workers' representatives for overtime concerning young workers.
Sweden	40	0%	48 overtime per 4 weeks or 50 per month, up to 200/year[j]	Prior authorization required from the National Board of Occupational Safety and Health for overtime in excess of 200 hours per year, or 48 hours in a 4-week period (up to 150 hours per year).[k]	**Textile industry — Premium**: 50% during the week; 60-70% on Saturdays; 100% on Sundays and public holidays.
United Kingdom	—[l]	—	—	—[m]	**Premium** (most frequently set): — 50% during the week; 100% on Sundays.
United States	40[n]	50%[o]	None	—	**Premium**: usually 50%; 100% on weekends and public holidays. Compensatory time-off is sometimes provided.

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[j] The maximum of 200 hours per year also applies to additional hours worked by part-time workers. A further 150 hours per year may be added to this figure with the authorization of the National Board of Occupational Safety and Health.

[k] In emergencies (e.g., natural disasters, accidents, or other unforeseen circumstances interrupting the activities of the undertaking or constituting a danger or health risk, etc.), the local association of workers has to be notified. Emergency overtime may not be worked for more than 2 days from the commencement of work without a request for authorization from the National Board of Occupational Safety and Health.

[l] The hours of the majority of manual workers and substantial numbers of nonmanual workers are covered by provisions of industry-level collective agreements.

[m] As with hours of work, overtime is generally covered by provisions of industry-level collective agreements and wage councils.

[n] Under federal legislation, which covers 50 million employees and provides for overtime payment after 40 hours. State laws of general application in 29 states also require the payment of overtime pay rates after 40 hours. In one state, overtime rates are payable after 45 hours; in one, after 46 hours; and in 3 states, after 48 hours. In addition, several state laws regulate hours of work in certain industries or for certain occupations (e.g., public construction works, mining and smelting, railroad, truck drivers, public sector). A survey of state government employees showed on average a workweek of less than 40 hours, usually 37.3 hours, in 14 states.

[o] Several state laws contain provisions on overtime. The usual premium rate is 50% (100% in California for work in excess of 12 hours per day).

Source: Adapted from International Labour Organization, *Conditions of Work, A Cumulative Digest*, Vol. 2 (Autumn) (Geneva: ILO, 1983), various fact sheets.

CHAPTER 8

United States Experience

In contrast to Europe, which has followed an interventionist, regulatory approach in dealing with hours of work and overtime, the United States has tended to rely largely on the market mechanism of a higher overtime premium to discourage overtime. The common situation is simply an overtime premium of time-and-one-half to apply after 40 hours per week. Maximum workdays or workweeks are not specified; hence, there is not a need to have exemptions, special regulations, or permits to exceed the maximum. In that vein, the legislative response in the United States tends to be more like that in British Columbia, Saskatchewan, and Manitoba: let the parties choose their own optimal workweek, subject only to the constraint of having to pay a time-and-one-half overtime premium after 40 hours per week.

In addition to providing this contrast with the European experience, the experience in the United States is of interest to Ontario because the United States is a major, proximate trading partner. In such circumstances, any legislation that affects labour costs can affect competitive positions. In a number of briefs presented to the Task Force, employers indicated that they could lose business to the United States or to offshore producers if they were hampered with more restrictions on their use of overtime. As well, in requesting special permits for additional overtime hours, firms often mention that they will lose business to the United States or other competing sources if they cannot use overtime to meet the increased demand. This "potential threat" is often sufficient for them to be granted a permit.

Obviously the extent to which overtime restrictions would make us less competitive than the United States or other producers is difficult to assess. Employers almost always bring forth these arguments against any form of regulation that will increase costs, and they tend to focus the comparisons on the United States or on Third World producers rather than on Europe, where regulatory costs would be higher. In addition, their focus is frequently on those elements of labour costs where we are at a disadvantage, not on those that give Canada a competitive advantage. Nevertheless, in times of increasing foreign competition and industrial relocation, such cost considerations are a relevant factor to consider in regulating labour standards, including hours of work and overtime. Hence, what happens in the United States in this area is likely to be of *some* relevance, even though the extent of that relevance is subject to legitimate debate.

The U.S. experience with the overtime issue also is of particular relevance because, as outlined subsequently, the United States has gone through a recent public debate over the pros and cons of restricting overtime to create jobs. While little background research was conducted in the context of that debate, it did deal with many of the issues that Ontario faces today.

Given the various state laws as well as federal legislation, the United States offers a multiplicity of experiences with legislation restricting the use of overtime. This could provide a potential laboratory for analyzing alternative procedures for dealing with overtime, although, as discussed subsequently, the U.S. experience is dominated by the federal jurisdiction.

Lastly, the U.S. experience with hours of work and overtime is relevant to Ontario because the United States forms part of the reference group used in establishing appropriate community norms for labour standards. Although the degree to which we do — or should — pay attention to what happens in the United States is certainly subject to debate, it remains the case that there is at least some, if not substantial, influence. This may be owing to trade ties, the influence of multinational corporations or international unions, or simply geographic proximity. Whatever the reasons, Ontario may be more influenced by what goes on in many parts of the United States than in provinces that have a completely different industrial base or geographic proximity.

For these various reasons it is useful to review the U.S. experience. In detailing that experience, this chapter draws heavily upon a background report prepared for the Task Force by Fred Lazar, *Hours of Work and Overtime: U.S. Experience and Policies*, as well as two other sources: a monograph, Ehrenberg and Schumann (1982), which deals with the issue of restricting overtime to create jobs in the context of the recent debate on that issue in the United States; and a U.S. study, Leonard (1983), written as part of an international review by the International Labour Organization on the overtime issue.

Pattern of Hours of Work and Overtime

The long-run trend in hours of work in the United States has been toward a persistent reduction in the workweek from about 70 hours in 1850 to 40 in the 1950s (Northrup 1965, p. 6). This trend has continued into the 1980s (*Employment and Earnings*, January 1987). For those who work overtime, the average hours of overtime worked is about 10 per week (calculations from Ehrenberg and Schumann 1982, p. 46).

The amount of overtime itself has increased slowly but steadily over the years, at least over the period since overtime data have been published. Ehrenberg and Schumann (1982, p. 5) indicate that, between 1956 and 1978, weekly overtime in manufacturing has increased by an average of 0.028 hours per year. (This is an average over all workers in manufacturing, not just those who work overtime.) This implies that over a 22-year period, average weekly overtime hours increased by almost two-thirds of an hour. The authors indicate, however, that the trend was generally statistically insignificant and that by the early 1970s the upward trend in overtime had ceased.

This decline in overtime hours since the early 1970s is also illustrated in data given in Taylor and Sekscenski (1982). The authors indicate that the proportion of full-time wage and salary workers who worked 41 hours or more on a single job declined by 29.1 per cent in 1973 to 23.1 per cent in 1980. Similarly, the proportion who received premium pay declined from 42.5 per cent in 1973 to 40.4 per cent in 1980.

Taylor and Sekscenski's data also exhibit the typical variation in the use of overtime by industry and occupation. Long hours are typical in agriculture, wholesale and retail trade, and mining industries; in the former two sectors, however, overtime payment is not so common because of exemptions from the legislation. Overtime hours that are compensated with an overtime premium are common in mining, manufacturing, and transportation and public utilities. Similarly, long hours are typical in managerial, administrative, sales, transport equipment, and farm occupations; with the exception of transport equipment operators, however, workers in these occupations seldom receive overtime pay because they are exempt from the legislation. Occupations that are more typically in receipt of overtime pay are crafts, operators, and labourers.

Leonard (1983, p. 87) also indicates that long hours are much more typical among males than females; married men living with their wives than single men; men in the 25-54 age category than other age groups; and nonunion than union employees. Although long hours are more typical among older, married men than younger and single ones, the former do not as often receive an overtime premium for their long hours. To a large extent this reflects the fact that they frequently hold the managerial and administrative jobs that are exempt from the overtime premiums. Conversely, union workers are less likely than nonunion workers to work long hours but are much more likely to receive an overtime premium if they do work long hours. This reflects a combination of the power of unions to bargain for shorter hours and overtime pay, as well as the fact that union workers are more likely to be covered by the Fair Labor Standards Act. Overtime pay also appears to be more prominent in jobs that are slightly below the median earnings, in part because jobs with high earnings tend to be exempt.

Legislation on Hours of Work and Overtime

In the United States, approximately 70 per cent of the workforce is under the federal labour jurisdiction, which covers interstate commerce, federal, state, and local government employees, and domestic service. With respect to labour standards, most workers in these areas are covered by the Fair Labor Standards Act of 1938, with its time-and-one-half overtime premium after 40 hours per week. State legislation, however, can take precedence if it is more beneficial to employees. Also, employees working on federal government contracts receive time-and-one-half after 8 hours per day or 40 hours per week, whichever alternative provides them with the higher weekly pay; that is, the federal contracts legislation adds the 8-hour per day trigger.

As indicated in Leonard (1983, p. 17), The Fair Labor Standards Act exempts the following groups either from its overall coverage or from its overtime provisions: executive, administrative, and professional employees; travelling salespersons; certain small retail or service establishments; interstate transport; agriculture; and many domestic servants. The retail exemptions category includes a complicated set of requirements, but basically it exempts establishments with annual sales of less than $362,500 — establishments that "are comparable to the local merchant, corner grocer or filling station operator." The domestic service exemption basically exempts live-ins, babysitters, and persons providing companionship service for the aged or infirm.

Compensatory time-off at the overtime premium rate is allowed under the Fair Labor Standards Act, but only if it is taken in the same workweek or pay period in which it was earned (Leonard 1983, p. 61). Individual employees do not have the right to refuse overtime under the federal Act.

Of the 30 states that have their own overtime law, 20 have the same time-and-one-half premium after 40 hours that the federal legislation has. Five states are more stringent in that they have an additional requirement for the premium to apply after 8 hours per day (2 states), 10 hours per day (one state), or 12 hours per day (2 states including California, which has a double-time premium). Five other states are less stringent in that the time-and-one-half premium applies only after a workweek of 45 hours (one state), 46 hours (one state), or 48 hours (3 states). All 30 states with overtime hours use the time-and-one-half premium, with California also having the double-time premium after 12 hours per day. The two states that are contiguous to Ontario — Michigan and New York — both have the common time-and-one-half premium after 40 hours.

Exemptions in state legislation tend to mirror those of the federal laws although there are some exceptions. For example, some states exempt small employers who employ four or fewer employees. Some permit four 10-hour days and do not require employers to pay the daily premium after 8 hours. In Washington State, premium rates are not applicable to employees who request compensatory time-off in lieu of overtime pay.

Since 1978, many of the states that had their own overtime laws have made changes in their legislation, mainly to reduce discrepancies between state and federal laws. Slightly more than half the changes relaxed the rules on overtime, while slightly less than half made them more stringent, usually by reducing the standard workweek or the number of exemptions. Also, the fewest number of changes are implemented in election years, presumably reflecting a desire by the legislators not to risk antagonizing either labour or business prior to an election (Lazar 1987).

Evolution of Overtime Legislation in the United States

As pointed out by Ehrenberg and Schumann (1982, p. 2), the earliest forms of hours-of-work legislation in the United States were introduced in the late 1800s at the state level. They covered only women and children, stipulated maximum hours that could be worked, and had the stated rationale of protecting the health and safety of women and children and reducing their fatigue and exhaustion. That period saw the maximum weekly hours extended to men as well, but only in particular occupations where the health and safety of the workforce was an issue (for example, mining) or where the health and safety of third parties were at risk (for example, railroads).

Although the ostensible purpose of the early maximum-hours legislation was to "protect" women and children, Landes (1980) provides evidence that the effect was to reduce the hours and employment of foreign-born women relative to white domestic-born women. She suggests that the real rationale may have been to protect jobs of the domestic workforce from foreign competition.

During the 1930s, an additional rationale — that of worksharing to increase employment — became an important justification for restricting hours of work. This obviously was connected to the high unemployment of the Depression years.

In 1938, the federal Fair Labor Standards Act was enacted, providing an overtime premium of time-and-one-half of the regular wage after 40 hours per week. There was a phasing-in period, with the premium to apply after 44 hours in the first year, 42 in the second, and 40 thereafter. No right to refuse overtime was included in the legislation. No maximum workweek was established in 1938, nor has one existed since. The decision was to impose a market-oriented penalty premium to discourage overtime, rather than to use a regulatory system involving maximum hours with exemptions. The issue was debated, with initial drafts of the legislation having outright prohibitions; these, however, were dropped in favour of overtime premiums that discourage rather than prohibit long hours.

Initially, the legislation covered less than 20 per cent of all employees; over the years, however, the coverage has been extended and now covers approximately 60 per cent of all employees. The major categories of exempt workers are supervisors, many salespersons, employees in seasonal industries including agriculture, state and local government employees, employees in small retail trade and service sector establishments, and some household workers.

Changes in the hours of work under the Fair Labor Standards Act have occurred mainly in the form of extended coverage. The overtime premium of time-and-one-half and the overtime trigger at 40 hours have remained constant since the inception of the legislation in 1938. This is quite remarkable when one considers the large number of political regimes — of different degrees of interventionist orientation — that have existed over that period.

Recent Proposed Changes

Numerous proposals have been introduced in Congress to raise the overtime premium, motivated in part by a desire to decrease the amount of overtime that has been increasing over the years. The most recent proposal came in 1979 from Representative John Conyers of Michigan, who proposed an increased premium from time-and-one-half to double time, a reduction in the trigger from 40 to 35 hours, and a granting of the right to refuse overtime. Conyers's bill was defeated, mainly because of concern over the possible inflationary effects associated with the cost increases and the possible deterioration of the U.S. competitive position at a time when international competition was posing a threat.

In 1985, hearings before the Subcommittee on Labor Standards were held to consider exempting state and local governments (many just recently brought under the coverage of the federal Act) from the requirement of having to pay overtime and provide compensatory time-off (if it were used) in the same pay period. The Fair Labor Standards Act allowed compensatory time-off, provided it was at least at the time-and-one-half rate *and* it was taken in the same time period as the overtime was worked. The latter condition was rationalized on the grounds that if it were taken in subsequent slack periods, then the job-creating potential would be reduced. The requirement of taking it in the same period was difficult to administer, however, especially with short pay periods; moreover, the opportunities to provide compensatory time were rare because the need for the additional hours often persisted throughout the pay period. Hence, "comp" time was rarely used.

Following the hearings, the Act was amended, but only to allow state and local governments the right to provide the compensatory time outside of the pay period. Numerous restrictions were imposed, however. The rate of compensatory time-off has to be at least at the premium rate of time-off. It must be mutually agreed-upon by employers and employees. A maximum of 240 hours of compensatory time can be accrued, although employees whose work involves public safety, an emergency response, or a seasonal activity may accrue 480 hours. Employees who have accrued compensatory time must be allowed to take it within a reasonable period after the request, provided that it does not "unduly disrupt" the operations of the state or local government. Finally, at the time of termination, an employee must be paid for any unused compensatory time.

This allowance for compensatory time to be taken outside the pay period applies only to state and local employers. Others must take compensatory time within the pay period. This, apparently, drastically restricts its use.

Survey and Interview Evidence

For his report for the Task Force, Lazar (1987) sent a one-page questionnaire to 49 states and received useful responses from 19. He also interviewed labour department officials in California, Massachusetts, New Hampshire, New York, Ohio, and Texas. Information was sought on such factors as: reasons for changes in the legislation; impacts of the legislation; importance of hours and overtime issues; factors inhibiting the use of alternatives to overtime; and future changes in the legislation.

The responses indicated that the states were concerned about the administrative and compliance burden, especially on small business, of having their legislation more stringent than the federal legislation. Most also felt no great political pressure to change their legislation. They did not see more stringent legislation leading to new jobs, mainly because they regarded overtime as a temporary, short-run phenomenon; any permanent overtime was because of skill shortages. There was a more mixed reaction over the effect that more stringent overtime hours might have on attracting investment. Some respondents felt this situation would have no effect because one state would only follow the lead of other states and hence not lose its relative competitive position; others felt that any form of additional regulation would deter new business.

The two main reasons given for why companies opt for more overtime were a shortage of skilled workers; and the hiring, training, and fringe benefit costs associated with new workers. Compensatory time-off in lieu of overtime, at a premium rate, was generally considered a feasible alternative to overtime cash payments for state employees; however, there was greater concern about this option for private sector employees, mainly because of potential scheduling problems.

Enforcement of the state laws was mainly through following up on complaints; however, because of underfunding even this was not carried out to an adequate degree. There was a perception that noncompliance was prominent. Yet despite these problems, few states were considering changes in their overtime legislation. It appears that overtime is not a major policy issue in most states, especially given the current emphasis on deregulation and de-emphasis on labour issues in general.

SUMMARY OF UNITED STATES EXPERIENCE

- *As in Canada, hours of work in the United States have declined steadily since the 1800s, levelling off to the 40-hour week in the 1950s with reduced hours coming more in the form of paid holidays, vacations, and earlier retirement.*
- *Overtime, however, has increased somewhat since the 1950s, although there is some evidence of a decline in the 1970s, especially during the recession years.*
- *In contrast to Europe, with its emphasis on an interventionist, regulatory approach to deal with hours of work and overtime, the United States tends to rely on the market mechanism of a higher overtime premium to discourage overtime.*
- *The current U.S. federal legislation, which applies to about 60 per cent of the workforce, requires time-and-one-half after 40 hours per week. This same standard has been in place since its inception in 1938, although the coverage of the Act has increased substantially over time.*
- *Exemptions in the United States are fairly similar to those in Ontario, involving executives, administrative and professional employees, travelling salespersons, interstate transport, agriculture, and many domestic servants. The United States, however, also exempts many small retail or service establishments.*
- *Compensatory time-off at the overtime premium rate has been allowed under the federal legislation, but only if taken in the same workweek or pay period in which it was earned — a restriction that has severely limited its use. A recent amendment exempted state and local governments from this restriction, allowing them to give the compensatory time in another time period.*
- *Individual employees do not have the right to refuse overtime under the federal legislation.*
- *Most states that have their own overtime legislation are patterned after the federal legislation. Only five states have slightly more stringent legislation in that they also have a daily overtime trigger at 8, 10, or 12 hours.*
- *The earliest hours-of-work laws in the United States were basically designed to protect the health and safety of women and children; hence, they did specify maximum hours of work.*
- *In the 1930s, however, worksharing became a rationale, in response to the unemployment of the Depression. This led to the overtime provisions of the Fair Labor Standards Act of 1938, with its time-and-one-half after 40 hours per week — a feature that has remained until today.*
- *In 1979, there was a proposal to increase the premium to double time, have the premium start earlier at 35 hours in the week, and have all overtime made voluntary. This was defeated, however, mainly because of concerns about overregulation at a time when international competition was threatening.*
- *Currently, there appears to be little pressure in the United States to change overtime regulations. Most changes going on are simply ones of streamlining, designed to bring the state laws in line with the federal legislation in order to minimize administrative and regulatory burdens. This is consistent with the current U.S. mood emphasizing deregulation, minimal government intervention, and competitive cost considerations.*
- *This mood seems to be carried over into the enforcement of state laws, which is largely on a complaints basis and minimal even then.*
- *Most U.S. labour administrators do not perceive much job-creating potential from restricting overtime, mainly because the overtime is believed to be temporary and often due to skill shortages that could not be filled by the unemployed.*

CHAPTER 9

Practices Under Collective Bargaining

Examining the extent to which hours-of-work and overtime issues are negotiated in the collective bargaining arena is important because slightly more than half of the Ontario workforce is covered by collective agreements. Occurrences within the unionized sector often have an indirect effect on the nonunion sector, setting patterns that will be emulated.

Knowledge of the extent of hours-of-work and overtime provisions in collective agreements is also important for determining the potential impact of changes in legislated employment standards. If the point of the changes is simply to catch up to what already is common practice in collective agreements, then naturally such changes will not affect that substantial portion of the workforce directly or indirectly affected by collective agreements.

As discussed in Chapter 1, employment standards are often seen as serving any or a combination of the following three functions: providing a minimum safety net or floor; reflecting a community norm; or setting a leading-edge example to be emulated by others. From each standpoint, what occurs in the unionized sector is important for employment standards.

For example, if employment standards are being established to reflect the community norm, it is important to know the hours-of-work and overtime provisions of collective agreements, given their direct and indirect effect in setting that norm. A certain overtime provision may be extremely common in collective agreements, and so it may be considered desirable to incorporate that provision, or something that approaches it, into employment standards. If the rationale for establishing employment standards is to provide a minimum safety net, then it is important to understand what occurs in the unionized sector so that the minimum standards do not exceed what exists in that generally better-protected arena. And if the rationale is to provide a leading-edge example but the precedent already existed in the union sector, then of course it would be unnecessary to establish employment standards for that purpose. For these reasons, it is important to be aware of the situation within the unionized sector before establishing employment standards that are likely to apply more specifically to the nonunion sector.

Collective Bargaining Provisions as a Precursor to Legislation

An understanding of practices that exist under collective bargaining provides insight into the trade-offs involved when two parties, each having a reasonable degree of information and negotiating power, bargain with each other. If certain provisions are prominent in collective agreements then, in many cases, such provisions may be taken as evidence that workers value them sufficiently to give up something else — wages, for example — in the bargaining process. It also shows that employers can afford to give up certain items in return for other elements in the give and take of bargaining.

Some observers see the existence of certain provisions in collective agreements as a precondition for their being legislated into employment standards. That is, if these provisions do not exist in specific collective agreements, then perhaps the employees did not value the items sufficiently to give up anything in return, or they were sufficiently costly that management was reluctant to give them up unless sufficient concessions were made elsewhere in the bargaining process. That the parties did not arrive at an agreement to include the items in the collective agreement may suggest that the costs to employers simply outweighed the benefits to employees — so that agreement on those items could not be reached. The results, to some, can be taken as a barometer of the appropriate cost-benefit calculation for legislating these items into employment standards. That is, if provisions are not sufficiently valued by workers to be bargained into collective agreements, then legislatures should be hesitant to mandate them into employment standards.

While there is a degree of logic to this argument, it is subject to a number of caveats. Being political institutions, unions tend to respond to the wishes of their median voting membership, likely to be middle-aged or older workers with seniority. With respect to hours of work, such employees may not be willing to give up overtime income or other items in return for the possibility that other (likely junior) workers would be recalled, or new recruits hired. Similarly, voting mechanisms may not adequately reflect the intensity of preferences of some workers. For example, the majority may not care about having the right to refuse overtime; however, it may be extremely important to a small minority that have certain family obligations.

At a more pragmatic level, union leaders may find it difficult to "sell" their rank-and-file on a policy that restricts their overtime income in return for the possibility — perhaps a nebulous one — of new jobs being created and workers being recalled from layoff. Under such circumstances, restrictions on overtime may not find their way to the bargaining table, especially because of their potential to create divisions within the rank-and-file. Similarly, innovative worktime arrangements may not find their way to the bargaining table either, because of a firm's reluctance to innovate, given that competitors can simply emulate successful innovations.

For these various reasons, it may not be possible to regard collective agreements as a precursor to legislating employment standards. That is, it may be unreasonable to require such standards to be prominent in collective agreements before they are legislated for the whole workforce. Thus, while such standards need not be found in collective agreements before they are legislated, it is nevertheless useful to know the extent to which these standards prevail in collective agreements.

This chapter, which provides an examination of the importance of hours-of-work and overtime issues in collective bargaining, relies mainly on a background report prepared for the Task Force by Eugene Swimmer, Morley Gunderson, and Doug Hyatt, entitled *Collective Bargaining, Hours of Work, and Overtime*. That report examines the hours-of-work and overtime provisions in 893 major collective agreements covering 200 or more employees as of July 1984 in Ontario. It documents the prevalence of hours-of-work and overtime provisions and analyzes their relationship to such factors as firm size, industry, union, region, job security provisions, and fringe benefits. It also examines grievance-arbitration decisions pertaining to hours-of-work and overtime issues. The discussion in that report, and in this chapter, is based on the proportion of the 893 major *collective agreements* with particular hours-of-work and overtime provisions. Unless otherwise noted, a similar pattern prevails for the proportion of *employees* covered by those provisions.

Scheduled Worktime, Overtime Premiums, Compensatory Time, and Paid Holidays

The vast majority of collective agreements specify an 8-hour day and 5-day week, after which overtime applies. More specifically, the 8-hour day prevails in 62 per cent of contracts, and the 7.5-hour day dominates in 17 per cent of contracts. The 5-day week prevails in 80 per cent of contracts, the 40-hour week in 61 per cent, and the 37.5-hour week in 17 per cent of contracts. Clearly, the current legislative standard of 44 hours per week, after which overtime must be paid, is less stringent than the standard in most collective agreements. Most agreements not only specify a more stringent weekly standard; they include daily standards (usually of 8 hours or less) as well as the 5-day workweek.

The most common overtime premium in collective agreements is time-and-one-half for hours beyond the scheduled workday (usually of 8 hours) or for Saturday work. Double time is the most prevalent premium for Sunday; work. Extra premiums for "excessive" overtime are not common, existing in about 20 per cent of the contracts: the special premium is usually double time after 4 hours of daily overtime have already been worked. For the overtime premium, then, collective agreements are similar to the legislative requirement of time-and-one-half although the contracts are more stringent in that they require the premium for Saturday or Sunday work (even if the hours on those days are not sufficient to exceed the scheduled workweek); they often require double time for Sunday; and they occasionally apply an extra premium for "excessive" overtime.

Allowing the employee the choice of compensatory time-off in lieu of pay, at the premium rate, prevails in about 20 per cent of the contracts (covering 30 per cent of workers) for daily overtime. The proportions are much smaller for weekly overtime (13 per cent of contracts) and Saturday or Sunday overtime (less than one per cent of contracts). Clearly, although it does exist in collective agreements, compensatory time-off is not a common phenomenon.

The number of paid holidays allowed in collective agreements tends to be higher than the 7 provided for in the Employment Standards Act. Specifically, only 4.6 per cent of the contracts include fewer than 10 paid holidays, 52 per cent provide 10-11 days, 36 per cent provide 12-13 days, and 6.5 per cent provide 14 or more days.

Restrictions on Administering Overtime

Collective agreements often restrict managerial discretion in the administration of overtime. As illustrated in Table 9.1, approximately half of the agreements allow workers the right to refuse overtime. (Unfortunately, the data do not indicate the extent to which this is a qualified right, restricted by such requirements as volunteers being available or the situation not being an emergency. Nor do the data indicate the hours after which this right applies, although presumably it is usually earlier than the legislated right to refuse, which applies after 48 hours.) The right to refuse in collective agreements is more prominent in small firms, in manufacturing, and among firms that extensively request special permits for overtime hours. There is also considerable variation by union, with the Canadian Auto Workers, Teamsters, and Steelworkers disproportionately having the right to refuse overtime.

Approximately half of the collective agreements also limit management's prerogative in the assignment of overtime by requiring that the overtime be distributed in some equitable fashion. The requirements for an equitable distribution of overtime are disproportionately high in manufacturing, especially among the heavy permit users. Also, there is considerable variation by union, with the Canadian Auto Workers, Electrical Workers, Energy and Chemical Workers, and Steelworkers disproportionately requiring the equitable distribution of overtime. Requirements for the equitable distribution of overtime are less common in situations in which layoffs are to be in reverse order of seniority. This suggests that senior workers, when their preferences dominate the union, can protect themselves from layoffs and are less likely to be required to share the overtime equitably.

Table 9.1

Restrictions on Administration of Overtime

Contract Provision		Per Cent of Contracts
Right to refuse overtime		49.6
Equitable distribution of overtime		46.7
Restrict overtime until layoffs recalled		2.5
Worksharing required during slack periods		12.2
Minimum overtime guarantees if called back:		
1-2 hours	4.4	
3 hours	20.3	
4 hours	40.7	
5+ hours	0.9	
Other	3.4	
No provision	14.0	83.7

Source: Swimmer, Gunderson and Hyatt (1987, Table 3). The original data source was Ontario Ministry of Labour collective agreements tapes.

On the matter of restricting the use of overtime to encourage worksharing, only 2.5 per cent of the agreements restrict management from scheduling overtime during slack periods until laid-off employees are recalled. Further, only 12 per cent require worksharing in the sense of requiring a reduction in hours or a sharing of work during slack periods. Some unions, however, have been extensively involved with worksharing arrangements; for example, 42 per cent of the Electrical Workers' contracts require a reduction in hours or a sharing of work during slack periods.

Almost 84 per cent of the contracts guarantee employees a certain minimum amount of overtime if they are required to return from home to work overtime at the plant; nearly half the contracts guarantee the equivalent of at least 4 hours of pay if called back to work overtime, and a further one-quarter guarantee 3 hours' pay.

Restrictions That Can Encourage Overtime

Collective agreements, by making it difficult for employers to hire additional workers, may well include provisions that encourage the use of overtime, especially when there is a temporary increase in demand. Since the collective agreements data do not contain information on the amount of overtime being used, it is not really possible to test this hypothesis. The data, however, do provide some information on the prevalence of provisions that *could* likely encourage the use of overtime by putting restrictions on the employer's use of alternative sources of labour. Whether these are actual barriers — not simply potential ones — remains unknown.

Table 9.2 illustrates that about three-quarters of the contracts, covering the same proportion of employees, have a restriction on subcontracting, on the use of nonbargaining unit employees, or on both. These restrictions can make it difficult for management to use such sources of alternative employment should there be a temporary increase in demand, and this in turn can compel management to work its existing employees overtime. Table 9.2 also indicates the primacy of seniority in determining which employees are to be retained if there are layoffs. Approximately 90 per cent of the contracts, covering almost 80 per cent of employees, specify seniority to be a factor — in most cases, the primary factor. This means that if there is a temporary increase in demand, the employer is likely to have to recall the more senior people from layoffs — even though they may not be the particular people needed to do the work. Therefore, the employer may simply work the existing workforce overtime. Because that workforce is already retained, it is already capable of doing the existing work; hence, it can likely handle the additional work through overtime.

As the bottom panel of Table 9.2 indicates, severance pay, layoff benefits, or both prevail in about 30 per cent of the contracts, covering more than 50 per cent of employees. This means that employers may be reluctant to hire new workers in the face of a temporary increase in demand because severance pay or layoff benefits will be incurred if such employees are subsequently laid off. (These are part of the quasi-fixed costs of hiring new workers, as discussed in Chapter 10.) This in turn may encourage employers to work their existing workforce overtime, rather than risk the additional costs associated with subsequent layoffs.

Table 9.2

Contract Restrictions that May Encourage Overtime

Contract Provision	Per Cent of Contracts	Per Cent of Employees
Restrictions on subcontracting and use of nonbargaining unit employees		
No restrictions	22.5	25.9
Restriction on either	48.9	45.3
Restrictions on both	27.6	28.8
Importance of seniority in selection of employees to be retained if layoffs		
No provision	10.4	21.9
Seniority a factor	20.6	14.8
Seniority primary factor	69.0	63.3
Severance pay or layoff benefit provisions		
No provision	68.7	47.3
Either provision	20.2	31.0
Both provisions	11.1	21.7

Source: Swimmer, Gunderson and Hyatt (1987, Tables 8, 9, 10). The original data source was Ontario Ministry of Labour collective agreements tapes.

Clearly, there are a number of contract provisions that potentially restrict new hiring or recalls from layoffs and encourage the working of overtime for existing employees. In most circumstances, these are hard-won rights that are valued strongly by unionists and that may be important for a union's very existence. In protecting the jobs of union workers, these provisions can encourage the use of overtime at the expense of restricting recalls or new hires. Whether this occurs in practice is simply not known from existing collective agreements data.

Some U.S. Evidence

Ehrenberg and Schumann (1982, p. 129) provide some data based on overtime provisions in major collective agreements in the United States as of 1976. They indicate the predominance of the time-and-one-half overtime premium on a daily and weekly basis as well as for weekend work, and the predominance of double time for Sunday work. About 42 per cent of the contracts required the equal distribution of overtime, and 18 per cent gave individuals the right to refuse overtime. These figures compare with 47 per cent and 50 per cent, respectively, in Ontario (Table 9.1).

Ehrenberg and Schumann (1982, p. 130) provide econometric evidence indicating that *unionized* workers receive a higher straighttime wage, other things equal, if they are subject to a mandatory overtime provision and do not have the right to refuse overtime. That is, in return for giving up the right to refuse overtime, they receive a compensating premium in their straight-time wage (the average magnitude being 2.6 to 4.0 per cent of their wage). Conversely, to obtain the right to refuse, they give up some wages in the bargaining process. Interestingly, Ehrenberg and Schumann find that, unlike union workers, *nonunion* workers do *not* receive a higher straight-time wage in return for mandatory overtime. This in turn offsets the compensating wage premium received by union workers, so that on average all workers do not receive a compensating wage premium for mandatory overtime. This leads Ehrenberg and Schumann (1982, pp. 138-39) to suggest that "the absence of such compensating wage differentials clearly strengthens the case for legislated prohibitions against mandatory overtime." That is, the market fails to compensate workers for such an undesirable working condition; hence, the case is strengthened for government intervention. As Ehrenberg and Schumann point out, however, this applies mainly for nonunion workers, since unionized workers and newly hired workers do receive a compensating wage for not having the right to refuse overtime.

Grievance Arbitration on Overtime

Provisions in collective agreements can be subject to differences in interpretation by union and management. Under such circumstances, the parties may have to go to arbitration for a ruling.

As indicated in Swimmer, Gunderson, and Hyatt (1987), overtime issues are not a major source of such grievance-arbitration cases in Ontario. They occur less commonly than issues pertaining to discharge, discipline, seniority, and wages (the subjects of about two-thirds of the cases). For example, in 1983 overtime issues were the subject matter of 3.6 per cent of arbitration cases, compared with discharge and discipline (36.3 per cent), seniority (19.2 per cent), and wages (9.8 per cent). Somewhat surprisingly, overtime issues appear to have declined in relative importance in spite of the increase in overtime usage. For example, overtime issues comprised 7.7 per cent of arbitration cases in 1975, compared with 3.6 per cent in 1983. This could reflect the fact that there are fewer disputes when overtime is more readily available.

Table 9.3 indicates that the most common subjects of grievance-arbitration cases pertaining to overtime involved the definition of such concepts as the workweek, the overtime trigger, and overtime itself. Issues pertaining to entitlement to overtime and the distribution of overtime together constituted approximately 25 per cent of the cases, indicating that overtime is sufficiently desired by some workers that disputes arising over its allocation are quite common. A substantial number of workers, however, do not desire the overtime, illustrated by the fact that 14 per cent of the arbitration cases arise because workers want the individual right to refuse overtime rather than have it compulsory. Clearly, some workers want the overtime (hence, the disputes over how it is to be allocated), and others do not want to have to work overtime (hence, the disputes over its being compulsory). This is consistent with the notion that flexible hours-of-work arrangements would be desirable, so as to accommodate the varying preferences of workers.

Table 9.3

Subject Matter of Reported Overtime Awards, Ontario, 1980-1986

Subject of Award	Per Cent of Cases
Daily/weekly definition of workweek and overtime trigger	19
Definition of overtime	16
Compulsory overtime	14
Entitlement to overtime	14
Overtime pay	14
Remedies for redress	14
Distribution of overtime	11

Source: Swimmer, Gunderson and Hyatt (1987). The original data source was *Labour Arbitration Cases*, vols. 1-30 (Toronto: Carswell), 1980-86.

Some Policy Implications

Reducing the legislative standard workweek from its current level of 44 hours to 40 hours would reflect what is occurring in collective bargaining. For that reason, it would have little impact on the unionized sector, where the standard workweek is typically equal to or less than 40 hours.

The current legislated time-and-one-half premium is also the norm in the unionized sector. Keeping it at that level would keep it slightly "behind" the unionized sector, where that premium often exists for any weekend work, where a double-time premium for Sunday work is common, and where an extra premium for "excessive overtime" occasionally exists.

Ministry of Labour data show that the right to refuse overtime, which currently exists in the legislation after 8 and 48 hours per week, exists in about half of the contracts of the unionized sector. Although there are no data on when the right to refuse applies in collective agreements, it is likely to be before the legislated 48 hours per week. Therefore, more stringent legislation would reflect what occurs in a substantial portion of the union sector. Further justification for making the legislation more stringent may be on the grounds that nonunion workers do not appear to receive a compensating wage for not having the right to refuse overtime.

The fact that requirements for the equitable distribution of overtime prevail in about half the agreements suggests that some consideration could be given to legislative requirements in that area — although there may well be difficulties monitoring and enforcing the distribution of overtime in the nonunion sector. This was not, however, an issue that sparked the current public concern about overtime in Ontario.

Rather, this concern about overtime was largely sparked by the apparent anomaly of some people working considerable overtime while others were unemployed, or even on layoff from the same establishment. Collective bargaining does not seem a viable vehicle for dealing with that particular broader social concern, as evidenced by the lack of provisions restricting overtime in the event of layoffs as well as the lack of worksharing provisions in slack periods. Therefore, legislative changes to reduce overtime could not, as a worksharing measure, be justified on the grounds of reflecting the norm of collective bargaining. Rather, they would have to be justified on the grounds of leading what goes on in collective bargaining, perhaps because the internal union trade-offs are simply not able to deal with that issue.

The considerable variation in the pattern of overtime provisions across the various unions suggests that there is not a consensus on a uniform approach to dealing with overtime. This in turn suggests the need for a flexible approach that meets the divergent preferences and constraints of the different groups.

The fact that overtime is not a major source of grievance arbitration — and that there continues to be a decline in the number of such cases — suggests that conflict over the administration of overtime regulations is not likely to be a problem if overtime is further regulated.

SUMMARY OF PRACTICES UNDER COLLECTIVE BARGAINING

- *Examining the way in which hours-of-work and overtime issues are handled in collective bargaining is important for a number of reasons: (1) more than 50 per cent of the Ontario workforce is covered by collective agreements and hence directly affected by them; (2) a substantial portion is also indirectly affected; (3) the effect of changes in employment standards will depend upon whether they are already exceeded in the union sector and elsewhere; (4) the union sector is an important component of the community norm and it may provide a leading-edge example; (5) knowing what goes on in the union sector is important whether one believes that employment standards should reflect the community norm, offer a minimum safety net, or provide a leading-edge example.*
- *The vast majority of collective agreements specify the 8-hour day or less and the 40-hour week or less as the scheduled hours after which overtime applies. Therefore, the current legislative standard of an overtime premium after 44 hours per week has little if any effect on the unionized sector. Going to a 40-hour trigger would have more of an effect, but it would not be substantial.*
- *By far the most common overtime premium in collective agreements is time-and-one-half. Collective agreements often exceed the legislative standard, however, requiring the premium for weekend work, often requiring double time for Sunday, and occasionally requiring an extra premium for "excessive" overtime.*
- *Compensatory time-off at the premium rate prevails in 20 per cent of the contracts, covering 30 per cent of the workforce.*
- *The right to refuse overtime and the requirement for an equitable distribution of overtime each prevails in about half of all agreements.*
- *Only 2.5 per cent of all agreements restrict management from scheduling overtime during slack periods until laid-off employees are recalled, and only 12 per cent require worksharing in the sense of a reduction in hours or a sharing of work during slack periods.*
- *Almost 84 per cent of the contracts guarantee employees a certain minimum amount of overtime, usually 3 or 4 hours, if they are required to return from home to work overtime.*
- *Collective agreements often contain provisions that can limit subcontracting, restrict the use of nonbargaining unit employees, and, in the face of layoffs, require seniority considerations as well as severance pay or layoff benefits. Such provisions in turn can provide an incentive for employers to work their existing workforce overtime rather than hire new recruits or recall workers from layoff.*
- *Overtime issues are not a major source of grievance arbitration, and they appear to be declining over time. Almost 25 per cent of the cases reviewed involved disputes over entitlement to overtime and the distribution of overtime, suggesting that overtime is highly desired by many. A significant number of cases (14 per cent) were also over the individual right to refuse overtime, suggesting that many others do not want the overtime. This highlights the importance of flexible work arrangements, geared to the different preferences among workers.*
- *Reducing the legislative standard workweek from 44 hours to 40 hours would reflect what is occurring in collective bargaining, and for that reason would not have a significant impact on the unionized sector.*
- *Keeping the legislative overtime premium at time-and-one-half would keep it slightly "behind" what exists in collective bargaining.*
- *Extending the right to refuse overtime below its current weekly level of 48 hours likely would reflect what is happening in collective bargaining. There appears some justification for this on the grounds that nonunion workers do not receive a compensating wage premium for not having that right.*
- *Restricting overtime as a worksharing device cannot be justified on the basis of collective agreements, since overtime with restrictions are rarely in the agreements.*

CHAPTER 10

Theoretical Reasons for Existence of Overtime

Policy initiatives to regulate the amount of overtime must be built upon an understanding of why overtime exists in the first place. Otherwise, there is the danger that the policy initiatives will simply deal with the symptoms rather than the underlying causes of the problem. An understanding of the causes will also aid in predicting whether overtime will increase or decrease over the years, as the underlying causes themselves change. This in turn will help in determining whether overtime is a permanent or temporary phenomenon. If it is temporary, then much of the problem may disappear before policy initiatives are put in place to deal with the phenomenon.

Any explanation of why overtime exists should be able not only to account for its time pattern (that is, its trend and cyclical fluctuations) but also to show why it varies across firms, industries, occupations, regions, countries, and types of workers. This is a tall order and one that is not likely to be filled through any single interpretation.

The purpose of this chapter is to discuss the variety of explanations that have been advanced to explain the existence of overtime. At this stage the emphasis is not on the empirical evidence, but rather on the plausible explanations that have been advanced. The following chapter deals with empirical evidence on the relative importance of the reasons for overtime.

Determinants of Employers' Use of Overtime

Based upon the academic literature, surveys, the briefs to and public meetings of the Task Force, and the experience of labour standards personnel, the reasons for the use of overtime by employers can be conveniently grouped into five main categories: short-run, temporary needs; spreading of quasi-fixed costs; skill shortages; uncertainty; and restrictions on the use of alternatives.

Short-Run, Temporary Needs

Overtime is obviously associated with an increase in the demand for labour. Such a demand increase can come from an increase in the demand for a firm's product — for example, from seasonal requirements, a flood of new orders, or the need to replace lost inventories after a strike. Alternatively, an increased demand for labour could come from a need for the kind of emergency work associated with the breakdown of machinery and equipment. It could also come from a need to replace other workers who are absent, on vacation or because of illness. In all these cases, there is some external event that increases the demand for workers.

Such an increase in the demand for labour can be met in several ways. The important question is, why does the firm work some of its existing workforce overtime rather than hire new employees or perhaps recall some of its employees who are on layoff? Stated another way, why does the firm choose to expand its labour input through increasing hours of work rather than increasing employment, especially when the extended hours may be at premium rates and quite possibly entail fatigue effects? In essence, there must be something different about the existing employees relative to new hires or recalls.

Thus, although overtime is often associated with short-run, temporary needs, such needs could be met by a number of employment-expanding procedures (recalls, temporary help agencies, subcontracting, part-time employees, additional shifts, or the use of a permanent cadre of employees to fill different temporary positions). Even temporary needs could be filled by hiring new employees, provided they were comparable to existing employees in terms of skills and costs.

Spreading of Quasi-Fixed Costs

Economists (for example, Ehrenberg 1971, Ehrenberg and Schumann 1982, Hart 1984) have tended to emphasize the importance of quasi-fixed costs associated with the employment of additional employees as a major deterrent to new employment. Some of these costs are fixed per employee; these include recruiting, hiring, training, vacation pay, holiday pay, and sick leave. Other costs may disproportionately increase if the firm expands its labour input by hiring more workers instead of working its existing workforce longer hours.

Quasi-fixed costs may be the unintended byproduct of growing fringe benefits, many of which are on a per employee basis and are independent of hours worked. This is the case with employers' contributions to health care or life insurance plans. In other cases, these costs may be the unintended byproduct of government-imposed payroll taxes that are used to finance such social programs as workers' compensation, unemployment insurance, or public pensions.

These latter social programs have elements of variable costs in the sense that employer contributions are a certain percentage of earnings. If they were based upon earnings exclusively, then, other things equal, the employer would be indifferent between either expanding the hours of existing employees or expanding employment. Other things equal (for example, wages, productivity, training costs), either option would increase payroll costs by the same proportion, and that in turn would increase employer contributions to such social programs by the same proportion. There is also a fixed cost component, however, because of the ceiling on the employee's earnings, beyond which contributions are not made.

In such circumstances, it is less costly for employers to work their existing employees longer hours (because no further employer contributions are required) than to hire new employees and incur such payroll taxes. In essence, the ceilings on the earnings beyond which no further employer contributions are required convert a variable cost into a quasi-fixed cost, and hence create an incentive for employers to amortize those quasi-fixed costs over longer hours rather than incur them by hiring new employees (Meltz, Reid, and Swartz 1981; Reid 1985, 1987b).

Even expected termination costs may be considered quasi-fixed costs to the extent that they are anticipated at the time of the hiring decision. That is, firms may be reluctant to hire a new employee if they may incur fixed costs associated with his or her termination. Such fixed costs could occur in the form of severance pay, advance notice requirements, or the possibility of a wrongful dismissal case through the courts or unjust dismissal proceedings through statutory employment standards provisions. In such circumstances, employers may prefer to work their existing workforce overtime rather than hire new workers and risk the possibility of such termination costs. Obviously, such termination costs serve other social objectives. They may, however, deter new hiring and lead to more overtime for existing employees.

Skill Shortages

Employers may have to work their existing employees overtime rather than hire new workers because the new workers may not have the skills required for the work. That is, there may be a mismatch between the skill requirements of the job and the skills of those on layoff or of the unemployed. This is especially the case if the demand increase is short term or if there is uncertainty about how long it will be sustained. In such circumstances, the firm may be reluctant to train the new recruits for the jobs, given their possible short-term nature. It may simply be less costly to work the existing employees overtime.

Obviously, the skill mismatch issue is closely connected with the viability of training or mobility programs to match workers with jobs. That is, the overtime issue is intricately tied to other employment-related issues including training and mobility, as well as to the previously discussed policies that created quasi-fixed costs associated with hiring new employees.

The skill shortage issue is also related to the rapid technological changes that are occurring throughout many industries. These changes may make some jobs obsolete, but at the same time they may increase the demand for other specialized occupations associated with installing and operating the new technology. Until these shortages can be filled by other mechanisms to attract new workers — training, mobility, job redesign, immigration, wage increases — overtime may be used to fill the void. Again, this is the case especially if there is some uncertainty over the permanency of the shortage. If the shortage disappears, many of these alternatives to overtime may be difficult to institute or reverse.

The skill shortage issue is one that differs by occupation, but it is obviously most serious in the case of skilled jobs that require a substantial training period. Certain shortages of skilled jobs can also create bottlenecks in the production process, preventing the employment of complementary workers if the skill shortages are not met, perhaps through overtime. As discussed in Chapter 4, this situation creates a dilemma for officials granting permits; if they do not grant the overtime permit for certain skilled jobs, other jobs could be in jeopardy.

The skill shortage issue is also intricately related to the job-creation potential of policies to reduce overtime. (This will be discussed in detail in Chapter 12.) If, because of skill mismatches, the reduction of overtime hours cannot be filled by new hires, then the job-creation potential of overtime issues is severely curtailed.

Uncertainty

Many of the previously discussed reasons for the use of overtime were related to uncertainty, especially uncertainty over the permanency of the demand increase. If the demand increase is expected to be permanent, then employers are more likely to incur the quasi-fixed costs associated with hiring new workers. In contrast, if the demand increase is expected to be only temporary, then employers are more likely to use overtime to bridge the gap, or until they are more certain about the longevity of the demand increase.

In recent years, firms have faced increased uncertainty associated with such factors as foreign competition, technological change, energy price changes, de-industrialization, and input price changes. In such circumstances, firms are often reluctant to make permanent investments in new capital and plants, at least until their relative position in the market stabilizes. In the interim, they may work a substantial portion of their workforce overtime.

Similarly, to meet current demands, industries that may expect substantial downsizing in the future (automobile production, for example) may prefer to use overtime than to hire new workers who subsequently will be laid off. If the downsizing occurs, workers are more likely to accept a reduction in their overtime hours than to face substantial layoffs. This is especially the case for industries where skills are not likely to be transferable. That is, there may be the perception that, should downsizing occur, there is little sense in training new workers in skills that will not be usable elsewhere.

Restrictions on the Use of Alternatives

Numerous alternatives exist to meet the demand increases that can lead to overtime. Such alternatives include new hires, recalls from layoffs, extra shifts, subcontracting, building up inventories, training, searching outside the region or country, job redesign, or increasing wages to attract new personnel. Any impediments to the use of these alternatives can increase the use of overtime.

Some impediments may inherently be a part of the alternative, as is the case with the quasi-fixed costs associated with hiring new workers. Others may be the byproduct of private and public policies. For example, if employer- or government-supported training is inadequate to meet training needs, then overtime work for those workers whose skills are in short supply may be a natural byproduct.

Business procedures, such as the trend toward just-in-time delivery, may also affect the use of overtime. That is, fluctuations in demand could be filled by inventories. In slow times, inventories can be built up by a permanent cadre of employees working regular hours. These inventories could then be used to meet unusual demand increases in other periods — they provide a buffer, enabling fluctuating demand to be filled by a constant number of employees without recourse to overtime. A reduction in the use of inventories as a buffer could lead to an increase in the use of overtime hours. The reduction in the use of inventories may itself have come about because of a rise in interest rates or the introduction of procedures such as just-in-time delivery.

The use of alternatives to overtime may be impeded by provisions in collective agreements that restrict subcontracting, the use of part-time workers, or the recall of workers on the basis of anything but seniority. These provisions, often won by unions as a basic element to provide a degree of job security, can restrict the hiring of new workers or even the recall of workers with seniority, if their skills do not match the requirements of the job. In such circumstances, existing workers may work overtime, especially if the demand increase is not regarded as sufficiently long term to merit the use of full-time as opposed to part-time workers, or if the work is to be done in-house as opposed to being subcontracted.

Restrictions on immigration may make it difficult for employers to rely on new immigrants to fill bottlenecks created by a shortage of skilled workers. Such restrictions were imposed in part to encourage the development of indigenous training and sources of skilled labour. Until that training emerges, however, overtime may be a viable alternative. Similarly, to clear certain skill bottlenecks, employers could raise wages to attract new workers, although that may be extremely costly if, for reasons of internal equity, the higher wages also have to be paid to the incumbent workers in those jobs. In such circumstances, the firm simply may find it cheaper to work the existing workforce overtime.

Clearly, numerous impediments can exist that restrict the use of alternatives to overtime. In many circumstances, these alternatives are the unintended byproducts of other legitimate policies. Nevertheless, through restrictions on the use of alternatives to overtime, such policies can clearly lead to an increased usage of overtime.

Employee Considerations

The previous discussion focussed on employers' reasons for preferring to use overtime rather than alternatives, including the hiring of new workers. Many of the reasons are shared by employees.

For example, employees also incur fixed or start-up costs associated with going to work. Such costs may occur in the form of commuting time or the cost of transportation or daycare. These costs may be fixed, independent of the hours one works, or they may have a fixed component as well as a component that increases with hours of work. For example, although daycare costs may vary with the hours that the child is in daycare, there may be a fixed component in terms of finding suitable daycare or getting the child to and from the daycare, or because the hourly rate is higher for short-term daycare.

In such circumstances, many employees may prefer to work long hours to spread the fixed costs (especially commute time) over a longer workday. As discussed in Chapter 2, much of the levelling off of the decline in the workday at 8 hours may reflect a desire to take increased leisure in such forms as delayed entry into the labour force, early retirement, increased vacations or holidays, or even a shorter workweek. Workers can amortize their quasi-fixed costs over a longer workday while using the additional income to take their leisure at other times.

Given the quasi-fixed costs associated with labour market work, some families may prefer to amortize those fixed costs by having one member work longer hours in the labour market and the other work in the household. This saves on the fixed costs that would be incurred if both engaged in labour market work. It does mean, however, that the one party working in the labour market may prefer, and in fact actively seek and even rely upon, the overtime work.

Why an Overtime Premium?

The previous discussion suggested that overtime may prevail because of temporary demand changes, fixed costs, skill shortages, uncertainty, and restrictions on the use of alternatives to overtime. Basically, however, these are explanations of why some individuals may work long hours. They do not really tell us why some of those long hours are worked as part of a regular work schedule and others are worked as overtime. In other words, if a person is *regularly* working a 10-hour day (for example, 8 hours at the regular rate of pay and 2 at an overtime premium), why wouldn't the firm simply give the person the same daily take-home pay but at a straight-time wage that is a weighted average of the regular pay for 8 hours plus the overtime pay for the additional 2 hours?

In part, the answer is that the overtime premium is likely to induce workers to accept the overtime voluntarily, because otherwise they forgo the high overtime premium. In contrast, if the same straight-time wage were paid for all 10 hours, then workers would only forgo the straight-time wage for not working the last 2 hours. In essence, the two-part price system of a regular and overtime wage is more likely to induce the voluntary acceptance of overtime than is a single straight-time wage for all 10 hours.

Possible Explanations for Persistence of Overtime

The fact that a number of the determinants of overtime have changed over the years may help explain the prevalence of overtime in spite of high unemployment. As well, it may explain the substantial amount of overtime that appears to be worked in certain sectors, notably in automobile production.

In recent years, Ontario has been undergoing a period of expansion and perhaps cyclical growth that can give rise to a demand for overtime hours. Not knowing whether the increased product demand is permanent, employers may be reluctant to expand their workforce. Their reluctance is compounded by the increased uncertainty associated with foreign competition, technological change, and their relative position in the ever-changing world market. Faced with such uncertainty and the possibility of ultimate downsizing, employers may be reluctant to expand their workforce, especially given the fixed costs of recruiting, hiring, training, and possible subsequent termination of many employees. Employers may also be reluctant to engage in training or extensive searches for new employees to fill skill shortages.

Given the growing prevalence of just-in-time delivery, inventories may serve less of a buffer than in the past. Firms also may be faced with restrictions in their collective agreements that make it difficult to meet the demand increase by hiring part-time workers or subcontracting or recalling workers on the basis of criteria other than seniority. Furthermore, new hires may give rise to increased fringe benefit costs and employer contributions to such items as workers' compensation, unemployment insurance, and pensions.

Faced with these uncertainties and cost increases associated with expanding their workforce, firms simply may decide to work their existing workforce longer hours, even if this means overtime premiums and possible fatigue effects. Once the picture clears, however, employers may re-evaluate their needs for their permanent workforce.

This suggests the possibility that much of the overtime may be temporary — associated with the recent uncertainty over changing market conditions and technology, superimposed upon a situation of growing fixed costs associated with the hiring of new employees. Our analysis also suggests, however, that much of the overtime increase may be a more permanent response to an economy that may be continually associated with uncertainty and the need to be flexible in a rapidly changing world. Overtime may simply be a component of more flexible work arrangements, including arrangements involving hours of work. In essence, theoretical reasoning alone cannot easily explain the prevalence of overtime and whether it is likely to be temporary or permanent.

SUMMARY OF THEORETICAL REASONS

- *It is important to have an understanding of the underlying causal reasons for the existence of overtime. Otherwise, we would not be able to predict changes in the patterns of overtime and recommend policies that may alter its use by affecting its causes and not just its symptoms.*
- *Such explanations must be able to account for the trend and cyclical fluctuations of overtime, as well as its variations across firms, industries, occupations, countries, and types of workers.*
- *Most of the explanations for the existence of overtime can be grouped into five categories: short-run, temporary needs; spreading of quasi-fixed costs; skill shortages; uncertainty; and restrictions on the use of alternatives.*
- *Short-run fluctuations in demand — for example, because of emergencies or seasonal fluctuations — obviously can give rise to the need for overtime. The question remains, however, as to why the firm does not meet that new demand by new hires or recalls from layoffs.*
- *Quasi-fixed costs associated with new hires can discourage the hiring of new employees and encourage the firm to amortize these costs by working its existing employees overtime. Such quasi-fixed costs can arise from numerous sources: recruiting, hiring, training, and expected termination costs; paid time-off from work; fringe benefits that are given on a per employee basis; or employer contributions to workers' compensation, unemployment insurance, or public pensions.*
- *Skill shortages can lead to overtime for workers who have the skills that are in short supply; new workers or those on layoff may not possess the requisite skills to substitute for those doing the overtime work. Skill shortages can emanate from the rapid technological and industrial changes that are occurring, and from the inability of the training system to provide the required skills.*
- *Uncertainty can compound each of the previously discussed reasons for using overtime. Uncertainty may stem from a number of concerns of firms: the permanency of demand changes; their own relative position in the product markets; expected termination costs associated with downsizing; or skill shortages arising out of technological change or the inability of the training system to deliver skilled workers. Faced with such uncertainties, firms may simply opt to work some of their existing workforce overtime, at least until the picture clears.*
- *Overtime may also be used because of impediments to the practice of alternatives to overtime. Restrictions against subcontracting or the use of part-time workers may exist in collective agreements. Just-in-time delivery systems reduce the use of inventories, which in turn can increase the use of overtime as an alternative to inventories to serve as a buffer for demand changes. Skill shortages may prevail because of immigration restrictions. They may also exist because of a reluctance on the part of the firm to raise wages to attract new workers since that may disturb the internal relative wage structure.*
- *Employees may also experience quasi-fixed commuting or daycare costs associated with getting to work, which may induce them to want to work long daily hours and to take their leisure time in such other forms as longer vacations or delayed entry into or early retirement from the labour force.*
- *The fact that a number of the determinants of overtime have changed over the years may help explain the prevalence of overtime in spite of high unemployment, as well as explain the permanent amount of overtime that seems to be worked in some sectors, notably in automobile production.*
- *To the extent that some of these changes are temporary, the recent prevalence of overtime may be temporary. It is very difficult, however, to determine the temporary or permanent nature of many of the phenomena that give rise to overtime, notably: recent economic expansion; growth of quasi-fixed nonwage labour costs; skill shortages; uncertainty about foreign competition and technological change; and impediments to the use of alternatives to overtime.*
- *Without further knowledge about the temporary or permanent nature of these changes in the underlying determinants of overtime, it is simply not possible to predict whether the use of overtime will grow or dissipate.*

CHAPTER 11

Empirical Evidence on Reasons for Overtime

The preceding chapter focussed on various reasons that have been advanced regarding the use of overtime and why it may vary over periods and by industry, firm, individual, and even country. The emphasis of that chapter was *theoretical* — examining short-term needs, quasi-fixed costs, skill shortages, uncertainty, and restrictions on alternatives. The focus of this chapter is on the *empirical evidence* that exists on the reasons for overtime.

Employer Reasons for Overtime

As part of its procedure for granting special excess hours permits (those issued after the initial 100-hour permit has been used), the Ontario Ministry of Labour requires firms to indicate their reasons for requesting the special permits. Table 11.1 lists these reasons, in descending order of relative importance, for the 80 establishments in Ontario that obtained the 249 special excess hours permits during 1983. The reasons for the overtime hours were obtained either from the letters requesting the permits or from a subsequent telephone interview.

Unfortunately, it is not a straightforward job to translate the employer response into the type of plausible reasons advanced in Chapter 10 — short-term needs, quasi-fixed costs, skill shortages, uncertainty, and restrictions on alternatives. Nor is it obvious that these categories can capture the underlying reasons for the use of overtime. For example, how would employers respond if they used overtime rather than hiring new workers because uncertainty about their long-run position in the market *and* because new workers implied substantial quasi-fixed costs? In spite of these caveats, Table 11.1 does provide considerable information on employer reasons for using overtime.

Table 11.1

Reasons for Requesting Special Permits, Ontario, 1983

Reason	Per Cent
To meet increased production and demand	27.4
Reorganization, new products	11.8
Seasonal pattern	8.8
To maintain high production standards	7.4
Specialized skills needed	6.8
Collective agreement restricts part-time	6.5
Absenteeism, vacations, sickness	6.2
To do maintenance work	4.1
Change of work schedules	3.5
To prepare production equipment	2.9
Shortage of skilled workers	2.3
Excessive amount of voluntary overtime	2.3
Shortage of materials and parts	1.8
To meet deadlines and clear backlog	1.5
Training period	1.2
Irregular working hours	0.9
Full use of machines	0.9
Unexpected emergency	0.6
To balance production runs	0.6
Handling of product shipping	0.6
Other reasons	2.0
TOTAL	100.0

Source: Ontario Ministry of Labour.

Most of the reasons behind permit requests pertain to meeting what are likely to be short-term, temporary demands. For example, the first three reasons (meeting increased production, reorganization and new products, seasonal demands) account for about 48 per cent of the responses for using overtime. Absenteeism, vacations, sickness, and maintenance work account for a further 10 per cent. Although these reasons *may* be associated with short-term, temporary demands, it is not clear how short-term or temporary the needs will prove. The need to meet increased production demands obviously can extend for a long period, as can reorganization and seasonal work. Absenteeism, vacations, sickness, and maintenance work can be permanent features of the employment environment as well, especially for those large firms that tend to request the special permits. Regardless of whether the demand changes are temporary or permanent, however, the question still remains: why does the firm choose to use overtime rather than hiring new workers or recalling workers from layoff? The reasons are likely to be a necessary but not sufficient condition for the existence of overtime; they are consistent with the fixed-cost and uncertainty explanations for the use of overtime, but they by no means "prove" that these are the underlying causes of the use of overtime.

According to the tabulated responses, skill shortages are an important, but by no means dominant, reason for the use of overtime, given in almost 10 per cent of the cases (specialized skills requirements, 6.8 per cent; shortage of skilled workers, 2.3 per cent). Restrictions in the collective agreement on the use of part-time workers (6.8 per cent of the cases) is another important reason for the use of overtime. It is difficult to know if any of the other explanations stem indirectly from restrictions on the use of alternatives to overtime.

In April 1986, the Canadian Federation of Independent Business conducted a survey of its member establishments and included a number of questions pertaining to overtime. Approximately 5,000 of the 35,000 independent Canadian-owned small businesses responded (about 98 per cent of these businesses have fewer than 100 employees and 74 per cent have fewer than 20 employees). Table 11.2 indicates the most important reasons given for using overtime, listed in descending order of relative importance.

Clearly, meeting short-run, temporary needs associated with peak periods is by far the dominant reason for using overtime, and this response is consistent with the pattern for those firms requesting special permits (Table 11.1). Using overtime to fill in for absenteeism, vacation, and sicknesses was much more prominent for small business (27.3 per cent) than for firms requesting permits (6.2 per cent). This result is understandable, given that small businesses usually do not have standby or alternative workers for such purposes.

Table 11.2

Reasons For Scheduling Overtime, Ontario Small Businesses, 1986

Reason	Per Cent of Firms
To handle peak periods	84.1
Absenteeism, vacation, sickness	27.3
Difficult to hire and train	26.3
Employees want extra income	13.5
To fill in until more staff hired	12.9
To save costs of taxes, benefits, hiring	6.0
Other	13.8
TOTAL•	183.9

• Total exceeds 100 per cent because firms could specify more than one reason.

Source: Canadian Federation of Independent Business (1986); based upon 5,008 responses to CFIB's provincial survey conducted April 1986.

From the responses to the questionnaire, it is difficult to determine the importance of quasi-fixed nonwage labour costs in encouraging the use of overtime as opposed to new hires in the small business sector. The direct response to the question of using overtime to "save costs of taxes, benefits, and hiring" was cited in only 6.0 per cent of the cases; indirectly, however, the quasi-fixed costs of hiring, training, and fringe benefits could still lie behind the use of overtime to "handle peak periods" (84.1 per cent of cases), because it is "difficult to hire and train" new workers (26.3 per cent), or because of the need to "fill in until more staff is hired" (12.9 per cent). On the other hand, it is also possible that the quasi-fixed costs simply are not so important in the small business sector, perhaps because its firms have more modest benefit packages and thus less need to spread fixed costs over longer hours.

In his background study for the Task Force, Lazar (1987) reported on a brief survey sent to administrators of state labour legislation in the United States. In his survey, he asked their perception of why companies opt for overtime. The most prominent reasons were: hiring and training costs; the relative increase of fringe benefits that are not tied to the hourly wage; and a shortage of skilled workers.

Hart (1984, p. 47) cites numerous sources of European evidence on employers' attitudes to overtime. For example, at the meeting of management experts on the adjustment of working time, organized in 1982 by the Organisation for Economic Co-operation and Development, employers gave three major reasons for the use of overtime. First, when there are unforeseen changes in demand, overtime enables a more rapid and flexible adjustment than the more costly procedure of increasing the number of workers. Second, the legislative costs of hiring and dismissing workers create quasi-fixed costs associated with new hires and thus make that option more expensive than increasing overtime hours. Third, overtime is popular among workers as a means of supplementing income.

As well, Hart (1984, pp. 45-48) cites evidence from a U.K. survey carried out in 1970 by the National Board for Prices and Incomes. Although acknowledging that the study is somewhat dated, Hart suggests that it is invaluable because of its thoroughness, involving a survey of more than 2,000 establishments and including a detailed investigation of more than 60 establishments. Reasons given for the use of overtime included skill shortages; the need to offer overtime pay to attract certain types of scarce labour that want the overtime pay; temporary needs associated with such factors as repairs; and the quasi-fixed costs associated with unemployment insurance contributions and similar factors, which made overtime cheaper than hiring new workers. The respondents to a survey of more than 1,500 firms in Ireland indicated that the primary reasons for using overtime are related to their need to meet short-run, temporary demand increases (see Table 11.3). Skill shortages were ranked as the eighth most important reason in the production sector, but they were not included in the ten most important reasons for the service sector. As indicated previously in the discussion of Ontario data, the importance of using overtime rather than new employees to meet such short-run demand needs is consistent with the fact that quasi-fixed costs are associated with new employees but not with overtime hours.

Weiermair (1987, Figure 2), in his Task Force background report, surveys various European studies on employer reasons for using overtime and finds that they run the gamut of responses, as previously discussed. He suggests that the most prominent reasons relate to the desire to meet temporary and uncertain demand fluctuations, and that overtime is considered cheaper than new recruits owing to the high fixed costs of labour.

In summary, the survey evidence suggests that employers use overtime mainly to meet short-run, temporary demands. There is also evidence suggesting that they meet those demands through overtime rather than new employment because the latter entails quasi-fixed costs in terms of hiring, training, dismissal, and fringe benefits. Overtime is also used to fill skill shortages. Other rationales, such as restrictions on the use of alternatives or uncertainty, are not prominent reasons given in the survey evidence. It should be noted, however, that the survey questions do not deal directly with such possibilities. For example, the use of overtime to fill short-run, temporary demands is consistent with the rationale of uncertainty because the uncertainty may pertain to the permanent nature of the demand.

Table 11.3

Employers' Reasons For Using Overtime, Ireland

Reason	Production Sector	Service Sector
To meet deadlines	57	46
To meet occasional demand increases	41	36
Nature of process or activity	38	35
Rush orders	32	19
Maximum utilization of capital	27	13
Fluctuations in customer demand	26	23
Employee absenteeism, sickness, or holidays	23	11
Skill shortage	20	n.a.
Non-normal work	19	12
Interruption in essential services	18	17
Keep numbers employed manageable	n.a.	12

n.a. = not available.

Source: Brennan, et al. (1980).

Econometric Evidence on Determinants of Overtime

In contrast to the survey questions, which seldom dealt directly with fixed costs, much of the econometric evidence on the determinants of the use of overtime deals directly with determining the importance of quasi-fixed costs. In addition, the econometric approach focusses on the effects of the overtime premium on the use of overtime hours, and in that vein it provides potentially important information on the effectiveness of this policy variable, an area covered in detail in the following chapter.

Ehrenberg and Schumann (1982, p. 26) summarize the empirical studies that estimate the extent to which the use of overtime hours is influenced by the ratio of fixed nonwage labour costs to the overtime premiums. The cited studies are Ehrenberg (1971), Nussbaum and Wise (1977), and Solnick and Swimmer (1978). Ehrenberg and Schumann (1982, pp. 14-15) conclude that "all these studies confirm that across establishments, a strong positive relationship exists between the use of overtime hours and the ratio of weekly nonwage labour costs per employee to the overtime wage rate." That is, other things equal, an increase in fixed nonwage labour costs would increase the use of overtime, and an increase in the overtime wage premium would reduce the use of overtime. Ehrenberg and Schumann (1982) confirm that this result generally holds when they update the analysis, at least based upon 1976 data. (The cited studies used data from 1966-74 surveys.) Their results, however, also indicate that in the manufacturing sector, the use of overtime is not sensitive to the overtime premium, and in fact overtime sometimes increases when the premium increases. The authors attribute this to the lack of variation in the overtime premium or to the lack of substitutability between overtime hours and new employment in manufacturing.

Using Canadian data over the years 1957 to 1965, Hameed (1973) also finds a positive and statistically significant relationship between quasi-fixed fringe benefit costs and overtime in manufacturing. Laudadio and Percy (1973) find a similar relationship across 20 Canadian manufacturing industries in 1968. In essence, the Canadian evidence — although limited and dated — supports the U.S. econometric evidence on finding a positive relationship between quasi-fixed fringe benefits and the use of overtime.

Ehrenberg and Schumann's (1982) results can be used to illustrate the magnitudes of the response of overtime hours to changes in the overtime premium. Robb and Robb (1987, Table 10) interpret Ehrenberg and Schumann's results as suggesting that a one per cent increase in the overtime premium would give rise to a 0.5 of one per cent reduction of overtime in manufacturing, and a 0.755 of one per cent reduction in the nonmanufacturing sector. Given that the manufacturing sector is larger and uses more overtime, this would suggest an overall figure of approximately -0.60. That is, a one per cent increase in the overtime premium would give rise to a reduction in the use of overtime of approximately 0.60 (six-tenths) of one per cent. Therefore, a 33 per cent or one-third increase in the overtime premium (from time-and-one-half to double time) would lead to a 20 per cent reduction in overtime hours (0.33 × 0.60 = 0.20). This number is broadly representative of the range of responses Ehrenberg and Schumann (1984, p. 9) reported from the other empirical studies, ranging from 7 to 29 per cent for manufacturing, and 17 to 34 per cent for nonmanufacturing.

This representative figure of a 20 per cent decline in overtime hours emanating from a move to a double-time premium implies that if an average of one hour of overtime were worked per person (including those who work no overtime), then the average would be about four-fifths of an hour after a double-time premium. Conversely, if the average were 8 hours among those who did work overtime, then their new average would be about 6 hours. (These averages of one hour over the entire workforce and 8 hours of overtime among those who work overtime are based upon the Ontario workforce statistics as discussed in Chapter 2.)

Some of the econometric studies also shed light on the empirical relationship between overtime and other variables besides fixed costs and the overtime premium. Ehrenberg (1971), for example, finds, other things equal, that there is no uniform relationship between overtime and establishment size; that higher absenteeism is associated with less overtime (the opposite of what one would normally expect); and that union establishments are associated with less overtime. The last observation leads him to speculate that "in some industries unions are seeking to limit overtime as a means of reducing unemployment among their members" (p. 63). In updating and refining this earlier work, Ehrenberg and Schumann (1982, p. 143) find similar results with respect to these other variables.

In summary, the econometric literature unambiguously indicates that higher nonwage labour costs are associated with more overtime. There is some ambiguity about whether a higher overtime premium may lead to reduced overtime. This appears to be clearly the case only in the nonmanufacturing sector. On average, however, it appears that an increase in the overtime premium from time-and-one-half to double time would reduce overtime hours by very roughly 25 per cent. That is, average overtime hours across all workers would decrease from one hour to three-quarters of one hour; and across those workers who work overtime, average overtime hours would decrease from 8 to 6 hours.

Employee Attitudes Toward Overtime

Although there is survey and econometric evidence explaining why employers use overtime, there is little systematic evidence on workers attitudes toward overtime. The most comprehensive evidence pertains to employees' preferences for longer or shorter hours (not overtime directly), based upon the Survey on Work Reduction conducted by Statistics Canada, as a supplement to the June 1985 Labour Force Survey (LFS).

In the LFS, employees were asked: "In the next two years, would you take a pay cut if you received more time off in return? Remember, for every hour less you work you would lose one hour's pay." They were also asked: "Would you trade some of your pay increase in the next two years for more time off? (For example, gain 5% more time off instead of a 5% pay raise?)"

Employees who answered yes to either of these questions were then asked to indicate how much time off they would like in four alternative employment-sharing options: a reduced workday, a reduced workweek, increased vacation, or sabbatical leave.

As discussed in Reid (1987b) and indicated in Table 11.4, slightly more than 27 per cent of paid employees (representing more than one million employees in Ontario) would take a pay cut or trade some of their pay increase for a proportionate reduction in their worktime. More than 18 per cent would prefer to work a shorter workweek, usually one day shorter, which is about a 20 per cent reduction in the workweek. A reduced workday, usually of 1.0 to 1.5 hours, was preferred by 10 per cent of employees. The most common option of all was for increased unpaid annual vacation, usually of one to 2 weeks. Unpaid sabbatical, usually of 2 months or less, was preferred by 13.7 per cent of employees.

It is interesting to note that the reduced workday was the least preferred alternative, selected by 10.0 per cent of all employees. This may reflect the fact that there are often fixed costs associated with going to and from work on a daily basis (for example, commuting time), and hence people prefer to take their time off in the form of blocks, such as an extra day per week or a longer vacation. This is also consistent with the historical decline in working time, having occurred more in the form of longer vacations and paid holidays than in the form of reductions in the workday once the 8-hour day became typical (see Chapter 2).

Special tabulations for the Task Force, carried out by the Conference Board of Canada and based on the June 1985 Survey on Work Reduction, showed the following patterns. Of those who expressed interest in reduced worktime, most preferred it to come from slower wage increases than from actual cuts in pay. The 27.3 per cent of the Ontario workforce interested in reduced worktime was slightly lower than the national average of 30.7 per cent, ranging from a high of 37 per cent in British Columbia to lows of around 23 per cent in New Brunswick, Newfoundland, and Prince Edward Island. The preferences for worktime reduction were highest in the age group 25-34 and lowest in the young and older age groups. Although these preferences were almost identical for men and women overall, they were substantially higher in the 25-34 age group for women (37.2 per cent) as opposed to men (28.7 per cent), presumably reflecting the effect of childcare responsibilities. Interest in worktime reduction increases with education and household income and is concentrated among full-time workers. It is only slightly higher among union than nonunion members. The group expressing the greatest interest in worktime reduction is highly educated women, ages 25 to 34, with a high household income.

Interestingly, about the same proportion of employees expressed a preference for increased worktime (with proportionately more pay). Thus, slightly more than half of the Ontario workforce would like to *change* its working time (with a corresponding change in pay).

Reid (1985, p. 155) indicates that a substantial portion of the U.S. workforce also has expressed a willingness to give up pay in return for various forms of worktime reduction. The reductions in pay required to obtain the worktime reduction were not the same in the Canadian survey, however, and so it is difficult to make direct comparisons between the two countries. Some recent U.S. evidence, based upon a Bureau of Labor Statistics survey in 1985, does suggest that less than 10 per cent of U.S. workers want to work fewer hours if it means a reduction in pay (*Wall Street Journal*, December 30, 1986, p. 17). Substantially larger numbers (ranging from 18 to 46 per cent, depending upon the occupation) want to work more hours for more pay, and one-half to three-quarters of the workforce want no change. These figures suggest a much weaker preference for reduced hours at reduced pay in the United States than in Canada. Differences in the nature of the survey, however, make direct comparisons difficult.

Table 11.4

Employee Preferences For Worktime Reductions, Ontario, 1985

Form of Worktime Reduction[a]	Employees Selecting Option		Average Preferred Per Cent Reduction in Worktime	Most Common Preferred Form
	Number	Per Cent		
Reduced workweek	687,100	18.3	19.9	1 day
Reduced workday	376,400	10.0	17.1	1-1.5 hours
Increased annual vacation	746,700	19.9	5.4	1-2 weeks
Increased sabbatical	513,400	13.7	8.0	2 months or less
One or more options	1,025,800	27.3	—	—

[a] Employees could specify more than one option.

Source: Reid (1987b, Tables 2-4), based on the Survey on Work Reduction conducted by Statistics Canada as a supplement to the June 1985 Labour Force Survey.

Unfortunately, data do not provide much direct information on employee attitudes toward overtime, as opposed to hours of work in general. Clearly, a substantial portion of the workforce would like to reduce its worktime and is willing to pay for this reduction. Also, this preference for reduced worktime is greatest among 25 to 44 year olds and among higher-income people, two groups for which the extent of overtime is also highest (Reid 1987a, Tables 10 and 12). The reduced workday, however, which is the form in which much of the overtime reduction would occur, was the least common preferred alternative. More important, because of the wording of the survey question, it is not clear how many people would prefer a reduction in overtime when that entails a loss of *premium* pay as opposed to simply a loss in regular pay or reduced pay increases.

There are a few U.S. studies that provide some direct survey evidence in worker attitudes toward overtime. Using a survey of 126 employees in a research organization in the United States, Hollmann (1979) found that employees were more willing to work overtime if they were satisfied with their job, if they identified with their organization, and if they perceived the rewards for working overtime to be fair. Their unwillingness to work overtime stemmed mainly from its potential conflict with family life. This potential conflict is also found in the U.S. Quality of Employment Survey of 1977 (Pleck, Staines, and Lang 1980; Staines and Quinn 1979). Those surveys also indicated that about half the employees felt they could refuse to work overtime without penalty and that this portion had grown significantly over the years. (In the United States, the right to refuse overtime is not guaranteed by statute, although it may exist as part of a collective agreement.)

Fottler and Schaller (1975) surveyed the attitudes to overtime of 980 blue-collar workers in an industrial firm. Older employees were found to be more reluctant to work overtime than were younger employees, and the willingness to work overtime was highest among married men as opposed to single men, married women, or single women.

This survey evidence suggests that there is some concern that overtime may conflict with family life and that, where there is not a legislative right to refuse, some workers may not feel they can refuse overtime. There is, however, also substantial evidence to suggest that employees welcome the overtime work, often as an important supplement to their income (for example, Weiermair's 1987 assessment of the European survey evidence). This, in fact, was cited previously as one of the reasons employers use overtime. It is also apparent from many submissions to the Task Force and a from a review of grievance-arbitration cases that many of the disputes occurred over who should be entitled to receive the overtime.

Undoubtedly, some individuals would prefer not to have to work overtime. Many may not be aware of any right to refuse overtime, or may be afraid to exercise that right. Some may willingly work the overtime but could agree not to work overtime, provided others agreed to do the same in the hope that new jobs would result. We simply do not have systematic evidence on the extent of such employee preferences as they pertain directly to overtime. Perhaps the safest statement that can be made from the empirical evidence is that although a substantial portion of the workforce would like to reduce its working time in general, it is unlikely that a substantial portion would like to reduce its overtime hours.

All this of course does not negate the potential importance of restricting overtime. It simply says, first, that such restrictions cannot be rationalized on the grounds that a substantial portion of the workforce that is working overtime would like to have that overtime reduced, and second, that this group is unable to achieve its desires through conventional market mechanisms or collective bargaining. Rather, the rationale has to rest more on the possibility that restricting overtime (even against the wishes of those working the overtime) would provide work for the unemployed and those on layoff. The preferences of the employed and those on layoff would matter more than the preferences of those who work overtime.

SUMMARY OF EMPIRICAL EVIDENCE

- *Survey evidence indicates that employers tend to use overtime mainly to meet short-run temporary demands. There is also evidence suggesting that employers meet these demands through overtime rather than new employment because the latter entails quasi-fixed costs in terms of hiring, training, dismissal, and fringe benefits. Overtime is also used to fill skill shortages. Other rationales, such as uncertainty or restrictions on the use of alternatives, are not prominent reasons given in the surveys; however, it should be noted that the survey questions do not always deal directly with such possibilities.*
- *The econometric evidence conclusively finds that higher quasi-fixed nonwage labour costs lead to more overtime. Also, higher overtime premiums usually lead to reduced overtime, although there is some U.S. evidence suggesting that this may not be the case in manufacturing.*
- *Overall, the econometric evidence based on the U.S. studies suggests that raising the overtime premium from time-and-one-half to double time would be associated with about a 25 per cent reduction in overtime. That is, average overtime*

hours across all workers would decrease from one hour to three-quarters of an hour; and across those workers who work overtime, it would decrease from 8 to 6 hours.

- *There is also some limited econometric evidence, based upon U.S. data, that suggests that there is no regular, uniform relationship between overtime and establishment size; that higher absenteeism is associated with less overtime, not more; and that union establishments are associated with less overtime.*
- *Survey data indicate that slightly more than one-half of the Ontario workforce would prefer to change its working hours, with a proportionate change in pay. This is roughly equally divided between those who would accept a reduction in pay for a proportionate reduction in worktime, and those who would like to increase their worktime to increase their pay.*
- *The preferred options for worktime reduction, in descending order of preference, are: increased annual unpaid vacations (usually one to 2 weeks), a reduced workweek (usually by one day), increased unpaid sabbatical (usually 2 months or less), and a reduced workday (usually by 1.0 to 1.5 hours).*
- *Most employees preferred their worktime reduction to come from slower wage increases over time, rather than through wage cuts. The preference for worktime reduction was highest in the age groups 25-34, and it increased with education and income. Although it was almost identical for men and women overall, in the 25-34 age group it was substantially higher for women than men.*
- *Although this survey evidence suggests that a substantial portion of the workforce would like to reduce its worktime, most of this reduction is likely to be in forms other than reduced overtime, especially given the overtime premium.*
- *The empirical evidence does not suggest that involuntary overtime is a prominent phenomenon in Ontario, where the right to refuse overtime exists after 8 hours per day and 48 hours per week.*
- *This suggests that the rationale for restricting overtime would have to rest more on its potential to create new jobs, rather than to protect those who work overtime.*

CHAPTER 12

Job-Creation Potential of Overtime Restrictions

One of the key rationales for restricting overtime is to create new jobs, and so it is crucial to have information on the job-creation potential of overtime restrictions. That job-creation potential depends upon two key linkages: the extent to which overtime policies (for example, an increase in the overtime premium) reduce the use of overtime, and the extent to which reductions in the use of overtime translate into new jobs. If either of these connecting links is broken — for example, if an increase in the overtime premium does not reduce the use of overtime, or if reductions in overtime do not lead to new hires — then policies to restrict the use of overtime will not lead to new jobs.

There are numerous policy options that can affect the use of overtime. These include the overtime premium, the overtime trigger (the standard workweek after which the premium must be paid), the maximum-hours limit, and permit exemptions for exceeding that limit. Other policy options may have an important effect on the flexibility with which overtime is used and so are important for that reason, but they are unlikely to have a substantial effect on the actual use of overtime. Such options include the right to refuse overtime, the allowing of averaging provisions that exempt certain hours from counting as overtime hours, and the use of time-off in lieu of overtime so that overtime work is offset by subsequent hours reductions. Although such policy options can be important for other reasons, it is unlikely that they would have substantial effects on the use of overtime hours itself.

Therefore, the discussion here focusses on two main policy options that potentially could affect overtime: the overtime premium, and the standard workweek after which overtime applies. These are the options addressed in the empirical literature on the job-creation potential of restrictions on overtime.

The empirical literature relevant to determining the job-creation potential of restrictions on overtime can be divided into four main strands: (1) North American studies that estimate the effect of changes in the overtime premium on the use of overtime and then translate this reduction of overtime into new jobs; (2) European studies that jointly estimate the determinants of hours and employment and thereby directly estimate the effect of changes in the standard workweek on employment; (3) European large-scale macroeconometric models that simulate the employment-creation effect of reductions in worktime; and (4) ad hoc translations of worktime reductions into new jobs. In discussing each of these procedures, this chapter relies extensively on the background report prepared for the Task Force by A. Leslie Robb and Roberta Edgecombe Robb: *The Prospects for Creating Jobs by Reducing Hours of Work in Ontario*.

Effect of Increased Overtime Premium on Overtime and New Jobs

One strand of empirical literature, based largely on studies from the United States, estimates an overtime equation where overtime is a function of the overtime premium, quasi-fixed costs of new hires, and a number of other variables. This provides evidence on the effect that changes in the overtime premium have on the firm's use of overtime hours. The reduction in overtime hours, emanating from the increased overtime premium, is then mechanically translated into new jobs, based upon information from other sources. In other words, the relationship between new jobs and increases in the overtime premium is not directly estimated from the experience of firms. Rather, only the relationship between the use of overtime and the overtime premium is directly estimated. The extent to which reductions in overtime translate into new jobs is then derived largely by assuming that all or a substantial portion of the reduced hours can be translated into new jobs. This procedure provides reasonable estimates of the reduction in overtime hours associated with increases in the overtime premium. The link between reduced overtime hours and new jobs is less satisfactorily established, however, because it is not based upon simultaneously estimating that relationship.

Theoretically Expected Relationship

According to basic economic theory, an increase in the overtime premium should reduce the firm's use of overtime hours by making overtime hours more expensive relative to other options, including the hiring of new workers, the recall of persons on layoffs, the use of part-time workers, and the use of more capital equipment. This is termed the substitution effect, and it reflects the substitution of cheaper for more expensive inputs in the production process. The higher cost of the overtime hours also means higher prices and, hence, a reduction in the demand for the firm's output. Some marginal firms may even be put out of business by the cost increase. This in turn means a reduction in the demand for all inputs — overtime hours, employees, and capital equipment. This is termed the scale or output effect, and it results because the higher prices lead to a reduction of output and, consequently, in all inputs, including overtime hours. The substitution and scale effects of an increase in the overtime premium unambiguously serve to reduce the use of overtime hours. However, they may increase or decrease the use of other inputs, including capital equipment and new hiring.

The magnitude of the reduction in overtime hours associated with an increase in the overtime premium depends upon a number of factors. The reduction in overtime hours will be small if it is not easy to substitute other inputs (for example, new hires, recalls from layoffs, part-time workers) for the reduced overtime hours. The reduction will also generally be small if the additional overtime hours are a small portion of the employer's cost of doing business. Finally, the reduction of overtime hours will be small if any associated price increase can be passed to consumers without substantially reducing consumer demand for the firm's output and hence the inputs (including overtime hours) required to produce that output.

Empirical Evidence of Increased Premium on Use of Overtime

Ehrenberg and Schumann (1982) provide a review of earlier U.S. studies on the effect of changes in the overtime premium on the use of overtime. Those earlier studies — Ehrenberg 1971, Nussbaum and Wise 1977, and Solnick and Swimmer 1978 — basically indicated that increases in the overtime premium were associated with a reduction in the use of overtime. Although this reduction varied considerably by study and sector, invariably a one per cent increase in the overtime premium was associated with a less than one per cent decrease in the use of overtime hours.

These earlier studies constrained the response of overtime to be the same, but of opposite sign, for a given percentage increase in either the overtime premium or the fixed costs of new hires. That is, a one per cent increase in the overtime premium was constrained to have the same percentage effect on the use of overtime as a one per cent decrease in the fixed costs of a new recruit. Ehrenberg and Schumann (1982) essentially relaxed this constraint and allowed the effect of changes in the overtime premium to be different from the effect of changes in the fixed costs of a new recruit, and they updated the earlier studies.

As indicated in the preceding chapter, Ehrenberg and Schumann's empirical evidence suggests that a one per cent increase in the overtime premium is associated with approximately a six-tenths of one per cent reduction (-0.60) in overtime hours. Therefore, a 33 per cent increase in the overtime premium (from time-and-one-half to double time) would be associated with about a 20 per cent reduction in the use of overtime. The reduction in overtime is expected to be larger in nonmanufacturing than in manufacturing.

It cannot be overemphasized that these estimates are very approximate. In the empirical literature, the reduction of overtime hours associated with a one per cent increase in the overtime premium commonly ranges from zero to an equivalent one per cent. This suggests that the reduction of overtime hours associated with a 33 per cent increase in the overtime premium (that is, going from time-and-one-half to double time) could range from zero to a corresponding reduction of about one-third in the amount of overtime. In the literature, the figure of approximately a 20 per cent reduction is typical, although substantial variation does exist.

Reductions in Overtime: The Effect on Employment

Once the effect of the overtime premium on the use of overtime hours is determined, the next step is to translate the reduction in overtime hours into new jobs. This is typically done by assuming that the reduction in an hour of overtime can be translated into an additional hour of a new recruit. Because there may be factors that make it unlikely that a reduction of overtime would lead to an equivalent increase in new jobs (these are discussed subsequently), these mechanical calculations are likely to yield a *maximum*, or upper-bound, estimate of the increase in employment resulting from reductions in overtime.

Table 12.1 illustrates such maximum potential increases in employment that could be expected to result from an increase in the overtime premium from time-and-one-half to double time. The increases in employment range from 0.3 to 4.0 per cent, with the most recent estimates being about 0.9 per cent for manufacturing and 1.5 per cent for nonmanufacturing. Ehrenberg and Schumann (1982, p. 20) suggest that the range of maximum employment increases would be from 0.5 to 1.5 per cent in manufacturing and 0.8 to 1.8 per cent in nonmanufacturing. These numbers suggest that increasing the overtime premium to double time could lead to a maximum employment increase of 0.5 per cent to 2.0 per cent, with a 1.25 per cent increase being representative. Based on an Ontario workforce of approximately 4 million full-time workers, this percentage increase in employment implies 50,000 new jobs, with a minimum of 20,000 and maximum of 80,000 being possible.

Offsetting Factors that May Reduce Employment Gains

Ehrenberg and Schumann (1982, pp. 134-37) emphasize that this is a maximum figure for the job-creation potential of increasing the overtime premium. They suggest that, for a variety of reasons, the actual figures will be substantially less. First, some of the substitution away from overtime hours will go into additional capital or other inputs, not necessarily new hires. In addition, the higher costs and hence prices mean a reduction in output and in all inputs, including labour. The authors suggest that these factors may reduce the employment-enhancing effect of a reduction in overtime by about 0.25 percentage points. This would be an employment offset of 20 per cent relative to an overall employment increase that would otherwise average 1.25 per cent, as summarized in Table 12.1.

Second, some of the new jobs may go into increased moonlighting, although this offset is unlikely to be substantial. Third, because of indivisibilities, small businesses especially may not be able to substitute a new person for the reduced overtime of their few employees. Ehrenberg and Schumann indicate, however, that the earlier study by Ehrenberg (1971) found no systematic relationship between establishment size and the ability to substitute new employees for reduced hours.

Fourth, if both employers and employees preferred the original amount of overtime, then to offset the increased overtime cost they may mutually agree to reduce other elements in the compensation package. If that happens, then neither party will have an incentive to reduce

Table 12.1

Maximum Increase in Employment Resulting From an Increase in Overtime Premium to Double Time From Time-and-One-Half

Study	Data (U.S.)	Increased Employment	Per Cent Increase
Ehrenberg (1971)	Manufacturing production workers, 1966	218,500	1.6
Nussbaum and Wise (1977)	Manufacturing production workers, 1968	491,400	3.7
	Manufacturing production workers, 1970	487,700	3.7
	Manufacturing production workers, 1972	361,900	2.8
	Manufacturing production workers, 1974	549,700	4.0
	Manufacturing production workers, 1968-74	320,000	2.0
Solnick and Swimmer (1978)	Private nonfarm workers, 1972	159,264	0.3
	Private nonfarm workers, 1972, 3SLS[a]	1,521,664	3.1
Ehrenberg and Schumann (1982)	Manufacturing production workers, 1976	n.a.	0.9[b]
	Nonmanufacturing production workers, 1976	n.a.	1.5[b]
Ehrenberg and Schumann (1982, p. 20)	Their assessment of reasonable ranges:		
	Manufacturing		0.5-1.5
	Nonmanufacturing		0.8-1.8
	Overall assessment of above figures		1.25, ranging from 0.5 to 2.0

n.a. = not available.

[a] 3-stage least squares estimates to account for the possibility that higher overtime may lead to greater fixed costs by inducing firms to substitute fringe benefits for wages so as to reduce the base from which overtime is paid.

[b] Average of nine different estimates that had different specifications of fixed costs as well as controls for establishment size and industry.

Source: Ehrenberg and Schumann (1982, extracted from Tables 2.2 and 2.5; and p. 20).

overtime hours, since the costs and benefits to them will not have changed.

Fifth, the mechanical translation of reduced hours into an equivalent number of new jobs assumes that the skills of the new employees are such that they could perform the work of those doing the overtime. The authors provide evidence, however, to indicate that this is not the case and that about 8.5 per cent of the newly created jobs would go unfilled for want of workers having the same skills and residing in the same area.

Sixth, noncompliance may reduce the employment-expanding effects. The authors indicate that existing evidence suggests that about 10 to 20 per cent of employees who work overtime fail to receive their legal entitlement of time-and-one-half. If this noncompliance rate remained constant, then the employment gains would be reduced by about 10 to 20 per cent.

Ehrenberg and Schumann indicate that these offsetting factors would substantially reduce the employment gains from a reduction in the use of overtime. They do not provide an estimate of this expected offset; however, if one sums their offsets from the substitution into capital and the reduction in output (20 per cent), the mismatch between the skills of the unemployed and overtime workers (8.5 per cent), and the noncompliance (10 to 20 per cent), this yields an offset of 38.5 to 48.5 per cent. Since they talked about these as minimum offsets, then an overall employment offset of 50 per cent seems representative.

These offsets suggest that the previous representative maximum employment increase of 1.25 per cent, ranging from 0.5 to 2.0 per cent, be cut in half, to 0.63 per cent, ranging from 0.25 to 1.0 per cent. This in turn reduces the estimated number of new jobs from 50,000 to 25,000, and the range from 20,000 to 80,000 down to 10,000 to 40,000.

Productivity Offsets

Ehrenberg and Schumann do not talk of any productivity offset, a possibility that has been given considerable attention in the European literature. A number of European studies have referred to productivity offsets of about 50 per cent (reviewed in Cuvillier 1984, p. 108; Reid 1985, pp. 160-61). That is, any reduction in weekly hours is compensated for by about a 50 per cent increase in hourly productivity. This means, for example, that a two-hour reduction in weekly working time only "costs" the employer the equivalent of a loss of one hour, because of the increased productivity associated with the reduced working time. As a consequence, this also means that the employer will be looking for new workers to replace only the one-hour loss of working time, not two hours. In other words, the job-creation potential will be cut in half by the induced productivity effects.

At face value, this productivity effect seems too large to be believed. Surely, if employers "lost" only one hour of output for two hours of worktime reduction, there would be more granting of worktime reduction since the "cost" is so low. In some of the cases where worktime was reduced and output did not fall by much, it may be that rest periods were reduced or the pace of work was increased. These changes, however, are obviously costly to workers, and hence any productivity-enhancing effect from these changes should not be regarded as costless. Also, some of the productivity-enhancing effects may reflect the adjustments discussed by Ehrenberg and Schumann. For example, the substitution of capital for overtime work would increase the measured productivity of the remaining workers.

For these reasons, it is not sensible to add the productivity offset of 50 per cent to the previously discussed Ehrenberg and Schumann offset of approximately 50 per cent. Such an addition, of course, would imply no employment-enhancing effect of reduced worktime. Nor does it make sense to consider the productivity-enhancing offset as 50 per cent of the remainder after the Ehrenberg and Schumann offset of 50 per cent, so that only 25 per cent (0.5 × 0.5) of the hours reduction would lead to new jobs. This should be done only if conclusive evidence can be obtained that the reduction in overtime hours leads to a *pure* productivity-enhancing effect of that magnitude.

This seems particularly unlikely since overtime hours are usually at the discretion of employers and are usually associated with meeting very specific output needs. Those hours are likely to be more crucial to the production process than are nonovertime hours that may involve substantial slack periods. It seems particularly unlikely that employers would willingly pay a worker time-and-one-half for an additional hour and literally get only one-half an hour's worth of output. For these reasons, an additional productivity offset seems unjustified, unless more specific evidence can be brought to the contrary.

Reductions in the Standard Workweek

Reductions in the use of overtime can be achieved not only by raising the overtime premium but by reducing the standard workweek after which the overtime premium is paid. In theory, this should have an effect similar to raising the overtime premium, in that the cost of additional hours generally will rise relative to the cost of new hires. This will cause the firm to substitute new hires for additional hours (the substitution effect). The higher cost — and, hence, higher prices — will cause a reduction in output and hence a reduction in all inputs, including the use of overtime hours (the scale effect). Both the substitution and scale effects work to reduce the amount of overtime hours used.

There is one important distinction, however, that makes reductions in the standard workweek different from increases in the overtime premium. In situations where the firm is already using overtime, then the cost of additional overtime does not change because it is still at the overtime premium. The additional cost emanates from the additional hours that now must be paid at the overtime premium once the overtime trigger is reduced. But *additional* overtime hours are not any more expensive than before.

The hiring of new workers, however, can actually be more expensive after the standard workweek is reduced. This occurs because they will have to be paid the overtime premium sooner in the workweek. This in turn makes it more expensive to amortize their quasi-fixed hiring and training costs. In such circumstances, it is possible that the reduction in the standard workweek could lead to increases in overtime among the existing workers who are working overtime and to a reduction in new hires — the opposite of what one would normally expect.

This unexpected result is more likely to occur in situations where a few workers are already working substantial amounts of overtime, and so the firm would have to reduce the overtime hours by a considerable amount before they fall below the new lower standard workweek. Conversely, if the overtime hours were spread over the firm's workforce rather than concentrated in the hands of a few, then the firm could more easily reduce those long hours to fall below the standard workweek and hence save the overtime premium.

The fact that much of the overtime in Ontario is concentrated in the hands of a few workers suggests that this unexpected result of an increase in overtime may be a possibility. As indicated in Chapter 2 (Table 2.4), only about 13 per cent of the Ontario workforce works overtime, averaging about 8 hours of overtime per week. If the standard workweek after which overtime applied were reduced by say 4 hours, then, to effect any cost saving by not using any overtime, the firms would have to reduce their overtime by 12 hours per worker. This may be quite difficult, given that the firms were already using substantial overtime in the first place. If the standard workweek after which the overtime premium applied were reduced, the cost of an *additional* hour of overtime, for a worker who already was working overtime, would not change — it would still be the overtime premium. However, the cost of hiring a new worker would actually increase (compared with the cost of hiring a new worker prior to the reduction in the standard workweek) because that worker now would have to be paid an overtime premium after the new reduced standard workweek. The worker who formerly worked overtime of course would also have to be paid the overtime premium after the new reduced standard workweek.

Contrary to the intent of the legislation, the reduced standard workweek could induce employers to work their existing overtime workers even longer hours rather than hire new workers who are now more likely to receive an overtime premium for some of their hours, given the reduction in the standard workweek.

Empirically, the effect of reductions in the standard workweek has been estimated in econometric models that simultaneously estimate the determinants of hours of work and employment. Both are typically expressed as functions of such variables as the standard workweek, the ratio of fixed-to-variable labour costs, and the quit rate, as well as a series of control variables. Also, most of the empirical studies utilizing this approach have been based upon European data, in part because of the recent emphasis in Europe on reducing the standard workweek in the hope of expanding employment. Since this literature provides direct estimates of the effect of changes in the scheduled workweek on the level of employment, it is not necessary to use other information to estimate this effect on hours of work and then translate any reductions in hours of work into new jobs (the methodology employed in the U.S. studies noted earlier).

The methodology that directly estimates the effect of overtime policies on employment as part of a system of labour-demand equations where hours and employment are jointly estimated seems superior to the methodology that first estimates the effect of overtime policies on overtime hours and then indirectly translates the reduction of overtime hours into new jobs. Although theoretically superior, the direct approach has its problems on the practical side. It requires more information for estimating the simultaneous relationships, and such data are seldom available. When they are, some of the estimated relationships (for example, between overtime hours and the overtime premium) seem unreasonable in magnitude. This casts doubt on the other estimated relationships (for example, between employment and overtime) that are simultaneously estimated as components of the complete model. For these reasons, the estimates from the direct approach should be taken with caution.

Table 12.2 illustrates the inconclusive nature of the empirical evidence on the employment-creating potential of a reduction in the standard workweek. None of the studies cited in the table found that a reduction in the standard workweek led to a significant increase in employment. Hart and Wilson (1986) found a significant employment-enhancing effect in firms that did not use overtime prior to the reduction in the standard workweek. In firms that did use overtime, however, the amount of overtime actually increased so that new employment decreased. (These findings are in line with the theoretical expectations, discussed previously.) Overall, these opposing effects offset each other, so there was no significant change in employment. The other studies also tended to indicate either no significant effect (Hart and Sharot 1978, Hart and MacGregor 1985) or decreased employment (White 1983).

Although they are of interest mainly because of the ultimate effect on employment, the results in the hours column indicate that reductions in the standard workweek did lead to reductions in total hours worked. They were smaller than the reductions in the standard workweek; hence, the actual amount of overtime itself often increased. This does not negate the job-creation potential of such policies, since that depends upon the reduction in actual hours worked (a reduction that did occur). The increased amount of overtime, however, can reduce that job-creation potential by increasing labour costs. The insignificant increases in employment that typically occurred (last column of Table 12.2) suggest that these higher costs did inhibit employment expansion.

In summary, the econometric evidence on the employment-creating effect of reductions in the standard workweek tends to be inconclusive. Reductions in the standard workweek lead to a typical reduction in total hours; however, the effect is often weak, and overtime hours themselves sometimes increase. More importantly, the effect on employment tends to be insignificant or even negative. Certainly, this evidence does not point to a substantial employment-generating effect from legislative reductions in the standard workweek.

It must be remembered, however, that these econometric models are still in their infancy. Many are recent, having received their impetus from the European pressure to reduce worktime in the hope of creating new jobs. They suffer from the typical set of problems that plague many econometric studies. Specifically, they tend to rely upon aggregate rather than firm-level data; there are problems in obtaining data on some of the variables such as quasi-fixed labour costs; and there are problems in disentangling the effect of one change — for example, a reduction in the standard workweek — from the multitude of other changes that are simultaneously occurring.

Evidence from European Macroeconometric Models

The previously discussed *microeconometric* models generally estimated single equations for the determinants of overtime hours, or interrelated equations where the demand for hours and employment were jointly determined. An alternative procedure is to incorporate the effect of a reduction in the standard workweek into a *macroeconometric* model and to simulate the employment effect from such a change. Such

Table 12.2

Effect of Reduction in Standard Workweek on Hours of Work and Employment

Study	Data	Effect of Reduction in Standard Workweek	
		Hours	Employment
1. Ehrenberg (1971)	U.S. manufacturing, 1966	large reduction[a]	n.a.
2. Hart and Sharot (1978)	British manufacturing, monthly 1961-72	small reduction[b]	insignificant
3. Hart and MacGregor (1985)	Federal Republic of Germany manufacturing, 1969	large reduction[a]	insignificant
4. Hart and Wilson (1986)	52 British metalworking firms, 1978-82	small reduction[b]	insignificant overall[c]
5. Neale and Wilson (1985)	British, 1948-80	small reduction[b]	n.a.
6. White (1983)	218 British industries	small reduction[b]	unchanged or decreased

n.a. = not available

[a] A one per cent reduction in the standard workweek gives rise to a more than one per cent reduction in hours worked.

[b] A one per cent reduction in the standard workweek gives rise to a less than one per cent reduction in hours worked and, hence, to an increase in overtime.

[c] But a significant increase in employment in the firms that did not use overtime and a significant decrease in the firms that did use overtime.

Source: Extracted from Robb and Robb (1987).

macro models are usually multi-equation models that estimate the effect that macroeconomic changes (for example, changes in the money supply or government spending) have on national economic variables like inflation or unemployment. In some circumstances, they can be adapted to incorporate the effect of such changes as a reduced standard workweek on components of those models, such as their employment equations.

Reflecting the recent interest in reduction in worktime to create employment, such simulations have been carried out largely in European macroeconometric models. Van Ginneken (1984) provides a review of these models and converts their results to a common standard that provides the percentage change in employment emanating from a one per cent reduction in the length of the workweek. He finds that positive employment effects typically occur. In two of the French models and in the model of the Federal Republic of Germany, a one per cent reduction in the standard workweek leads to an increase in employment of 0.6 to 0.8 of one per cent. A smaller increase of 0.1 to 0.5 of one per cent was found in a model for Belgium and the FREIA model for the Netherlands, and an even smaller increase of 0.05 to 0.28 of one per cent was found in the U.K. model. One model (the Vintaf model for the Netherlands) did find negative employment effects, but they were small and were based on the assumption that earnings did not fall when hours of work were reduced.

Assuming a one per cent reduction in the workweek leads to a 0.6 of one per cent increase in employment (as representative of the above estimates) implies that it would take a 1.66 per cent reduction in the workweek to yield a one per cent increase in employment. Based on a 40-hour week, this 1.66 per cent reduction in the workweek would imply a reduction of about 1.1 hours per week to yield a one per cent increase in employment.

As pointed out by Robb and Robb (1987) and others, these macroeconometric models suffer from numerous problems that imply that their results should be treated with extreme caution. In general, these models were constructed for purposes other than simulating the employment effect of reductions in the standard workweek. Hence, they do not specifically model the precise causal mechanisms whereby reductions in the standard workweek could affect employment. That is, they do not rigorously specify the way in which firms divide their demand for labour into separate hours and employment components, nor do they precisely measure crucial variables like the rate of quasi-fixed-to-variable labour costs. Apparently, what one gains in the comprehensiveness from the large-scale macro models, one loses in their lack of specificity on the causal mechanisms that determine how firms respond.

This conclusion also applies to the existing Canadian large-scale-macroeconometric models. Robb and Robb (1987) review 10 such models to determine whether they have labour demand sectors that distinguish between the demand for employment and hours, and, if they do, whether they could be used to simulate the effect of policies designed to influence hours worked. They find that only a few of the models divide labour demand into its employment and hours components. Those that do, do not allow for a trade-off between hours and employees as functions of fixed versus variable costs of labour. In essence, they do not allow for the incorporation, in any meaningful fashion, of the conventional policy variables that may affect the hours-employment trade-off, nor do they allow for the effect of such policy variables to be traced through to the hours-employment trade-off.

At best, some of the current Canadian macroeconometric models could be used to calculate mechanically the number of new jobs created if hours were reduced and all, or a certain portion, of those hours, were translated into new jobs. The result could then be used to simulate feedback effects on such factors as unemployment insurance payments and aggregate demand. Such calculations, however, are only as good as the assumptions that go into them, and the models themselves will not provide information on the extent to which reductions in hours will lead to increased employment.

Ad Hoc Estimates from European Studies

In contrast to the previously discussed studies that attempt to estimate empirically the extent to which reductions in hours of work lead to new jobs, a number of studies have mechanically translated hypothetical reductions in the workweek into new jobs. Although the procedures have differed across the studies, three steps are generally involved. First, a hypothetical reduction in the standard workweek is assumed to lead to a reduction of total working hours of the same amount (implicitly assuming, for example, that firms do not respond by increasing their overtime hours). Second, this reduction in total working hours is mechanically translated into new jobs (implicitly assuming, for example, that the two are perfectly substitutable). Third, sometimes ad hoc adjustments are made to account for the fact that the reductions in the standard workweek may not lead to an equivalent reduction in total working hours, and that the reduction in total working hours may not lead to an equivalent increase in new jobs. For example, if there are productivity improvements associated with the shorter working time, then an equivalent number of new workers need not be hired to produce the same level of output. Alternatively, output itself may be reduced because of the higher cost associated with the reduction of the standard workweek.

Such ad hoc calculations of the job-creation potential of worktime reductions have been done for a number of European economies, given their emphasis on worktime reduction as a means to create new jobs. Unfortunately, their methodologies are sufficiently different that they do not enable one to standardize their results to indicate, for example, the per cent change in employment that emanates from a one per cent decrease in worktime.

Cuvillier (1984, pp. 106-109) reviews a number of these European studies, whose conclusions are repeated here simply for illustrative purposes. An Austrian study estimated that the reduction of weekly hours (from between 45 and 48 in 1959, to 40 in 1975) and increases in annual leave brought about a 60 per cent increase in employment over that period. A French study indicated that, between 1967 and 1976, the annual fall of 30 minutes in average weekly working time resulted in the creation of 50,000 jobs per year. Another French study estimated that all of the job creation that occurred in France over the 1970s can be attributed to reductions in working time. A Spanish study calculated that 25,000 jobs would be created if 100 major establishments reduced overtime by one-half. A study from the United Kingdom estimated that if all the overtime worked in manufacturing could be converted into full-time jobs, there would be no unemployment in that sector.

Clearly these studies tend to provide an optimistic portrayal of the job-creation potential from reductions in the scheduled workweek. In large part, however, this occurs because the studies simply mechanically translated the worktime reduction into an equivalent number of new jobs, without considering how firms may respond to the worktime reductions and that new recruits may not be good substitutes for existing employees working reduced hours.

In that vein, these European studies are of limited usefulness except to indicate that there is a *potential* for worktime reduction to lead to employment creation. Whether that potential comes to fruition, however, is not adequately addressed by those studies.

SUMMARY OF JOB CREATION POTENTIAL

- ***The job-creation potential of restrictions on the use of overtime depends upon two key linkages: the extent to which overtime restrictions reduce the use of overtime, and the extent to which such reductions in overtime in turn lead to new jobs. If either of these links is broken, then restrictions on the use of overtime will not lead to job creation.***
- *Theoretically, an increase in the overtime premium should reduce the use of overtime both because overtime is more expensive than new hires and because all labour inputs (including overtime hours) will decrease as a result of the higher costs.*
- *The substitution of new hires for overtime hours will increase employment. The higher labour costs associated with the higher overtime premium, however, will reduce employment, thereby offsetting some of the employment-enhancing effect of the overtime increase.*
- *The empirical evidence, existing only in U.S. studies, suggests that an increase in the overtime premium from time-and-one-half to double time would reduce overtime hours by about 20 per cent, with considerable variability about that estimate, being higher in nonmanufacturing than manufacturing.*
- *This 20 per cent reduction in overtime hours in turn could lead to a maximum potential employment increase of about 1.25 per cent, ranging from 0.5 to 2.0 per cent.*
- *Numerous factors will likely offset much of this job-creation potential. The higher labour costs associated with the overtime premium means a reduction in the demand for labour. There may be increased moonlighting and alternative compensation arrangements to offset the overtime costs. Indivisibilities may prevent small firms from hiring a new worker to replace the lost overtime hours. New hires may not be good substitutes for the reduced overtime hours, and noncompliance with the legislation may reduce its job-creation potential.*
- *The total of these offsets may be roughly 50 per cent, reducing the job-creation potential from a representative figure of a 1.25 per cent increase in employment, to a 0.63 per cent increase in employment, again with considerable variations about that estimate.*
- *Reducing the standard workweek (hours after which the overtime premium must be paid) theoretically should have the same employment-enhancing effects as increasing the overtime premium. There is one important exception here for firms that already use overtime: the cost of* additional *overtime is the same for those employees already working overtime; however, the cost of an additional* worker *is actually increased compared with the cost before the workweek reduction because that worker would have to be paid overtime after fewer hours. This could reduce the job-creation potential of reductions in the standard workweek.*
- *The empirical evidence — based exclusively on European studies — indicates that reductions in the standard workweek do tend to reduce working hours, but usually by less than the reduction in the standard workweek. The employment-enhancing*

effects are usually insignificant. These empirical studies, however, are few in number, they are based on European data, and they suffer from acknowledged methodological and data problems.

- *Large-scale macroeconometric models — again exclusively European — tend to find small but positive employment-enhancing effects from reductions in the length of the workweek. Typically, a one per cent reduction in the workweek is associated with a 0.6 of one per cent increase in employment. This implies that a reduction of the workweek by slightly more than one hour would increase employment by about one per cent.*
- *None of the 10 main Canadian large-scale macroeconometric models enables such simulations for Canada.*
- *Ad hoc estimates of the job-creation potential of reduced worktime have also been made for a number of European countries. These estimates suggest a substantial job-creation potential, but that is based upon a mechanical translation of reduced hours into new jobs. Such a mechanical translation is unlikely, however, since policy changes do not automatically lead to worktime reductions, nor do worktime reductions automatically lead to new jobs.*
- *Overall, it appears that there may be some job-creation potential in policies to reduce hours of work and overtime, but that this potential is severely limited, mainly because the cost increase associated with hours-of-work and overtime restrictions also reduces the demand for labour in general.*

CHAPTER 13

Illustrative Job-Creation Calculations for Ontario

The job-creation potential of various policies to restrict the use of overtime can be illustrated for Ontario. The illustrative calculations presented in this chapter are based on those in a background report prepared for the Task Force by Robb and Robb, *The Prospects for Creating Jobs by Reducing Hours of Work in Ontario* (which should be consulted for technical details). That study examines a number of policies: eliminating long hours (over 48, 44, and 40 per week); eliminating extra hours worked (actual minus usual hours); eliminating overtime hours; raising the overtime premium to double time; and providing a subsidy to offset some of the fixed costs associated with hiring new workers.

Eliminating Long Hours

Statistics Canada's Labour Force Survey provides information on the number of persons working long hours in Ontario. By converting these long hours into new-job equivalents, we can arrive at a picture of the *maximum* number of new jobs to be created if such long hours were reduced. This is a maximum figure because not all of these hours could be reduced by legislative initiatives. Many of the people working long hours are beyond the purview of the legislation, and not all of the hours reduction would be translated into new jobs. Nevertheless, such a picture is instructive to have.

Table 13.1 indicates the number of workers who regularly worked over 48, 44 and 40 hours per week in Ontario in 1985 (columns 1-3, respectively). The numbers in these columns have then been converted into job equivalents (columns 4-6) by calculating the total number of long hours involved[1] divided by the average workweek. These are not full-time job equivalents, but the actual (full-time and part-time) job equivalents based on the average workweek.

The calculations indicate that if all hours worked over 48 hours per week were reduced to 48 hours, this would lead to 119,000 new-job equivalents (column 4). Similarly, reducing the hours worked over 44 down to 44 hours would lead to 181,000 new-job equivalents (column 5), and reducing the hours worked over 40 down to 40 would lead to 264,000 new-job equivalents (column 6). These job equivalents are, respectively, 3.0, 4.5, and 6.6 per cent of the existing number of jobs (columns 7-9). That is, by reducing all hours of work over 40 per week down to 40 per week, we would create 264,000 new-job equivalents, or a 6.6 per cent increase in employment.

The extent to which these job equivalents would be translated into actual new jobs is open to question. In many circumstances, the legislation could not reduce the hours of work because numerous groups (for example, managerial) are exempt from the hours-of-work and overtime provisions. Robb and Robb (1987) suggest that less than one-half of workers who work long hours are likely to be affected by the legislation. This suggests cutting the hours reduction and, hence, the job equivalents and the potential employment growth by at least one-half. These estimates, assuming half of the workforce is affected, are given in Table 13.1, in the second row from the bottom.

In addition, even for those who are covered, the job-creation potential would be inhibited by numerous factors: increased moonlighting, increased noncompliance, the possibility that new recruits may not be good substitutes for reductions in overtime hours, and the reduction in the firm's demand for labour associated with the higher costs. The discussion in Chapter 12 suggested that these adjustments could reduce the job-creation potential of restrictions on long hours by a further one-half. These estimates, assuming that 50 per cent of the overtime hours reductions are translated into new-job equivalents, are given in the bottom row of Table 13.1.

As the occupational and industrial figures indicate from Table 13.1, there is considerable

Table 13.1

Workers With Long Hours, and Job Equivalents of Those Long Hours, Ontario, 1985

Sector	Number of Workers Working			Job Equivalents			Per Cent of Industry or Occupational Employment Accounted for by Job Equivalents of Hours		
	Over 48 Hours (1)	Over 44 Hours (2)	Over 40 Hours (3)	Over 48 Hours (4)	Over 44 Hours (5)	Over 40 Hours (6)	Over 48 Hours (7)	Over 44 Hours (8)	Over 40 Hours (9)
		thousands			thousands				
Industries									
Agriculture	16.4	21.1	21.1	5	7	9	9.6	13.1	16.8
Other primary	0.0	0.0	0.0	0	0	0	0.0	0.0	0.0
Manufacturing	91.5	175.8	234.4	21	35	57	2.1	3.5	5.7
Construction	33.8	48.2	57.3	9	13	18	4.6	6.8	9.6
Transportation & communications	36.6	54.8	68.9	10	15	21	3.5	5.2	7.4
Trade	69.5	104.3	139.3	21	32	46	3.0	4.6	6.7
Finance	28.5	39.9	48.4	8	12	17	3.3	4.9	6.8
Service	123.9	177.3	213.1	27	38	53	2.3	3.2	4.4
Public administration	15.7	27.6	41.5	4	7	11	1.5	2.4	3.7
Occupations									
Managerial, professional	187.0	269.7	320.5	50	75	105	4.2	6.3	8.8
Clerical	18.2	39.0	64.4	5	9	15	0.7	1.2	2.1
Sales	47.0	63.2	75.1	15	21	30	4.4	6.4	8.9
Services	33.7	52.3	68.2	12	18	26	2.4	3.6	5.2
Primary occupations	18.6	25.1	25.1	6	8	10	6.7	9.2	12.1
Processing	52.6	110.4	155.2	11	20	34	1.7	3.1	5.2
Construction	22.3	34.2	44.1	6	8	13	3.1	4.8	7.1
Transportation	31.7	43.4	51.3	9	12	17	6.2	9.0	12.4
Materials & crafts	8.0	18.4	27.8	1	3	6	0.8	1.7	3.3
All Employees*	422.1	658.8	837.7	119	181	264	3.1	4.5	6.6
Assuming 50% affected	210.5	329.4	418.9	60	90	132	1.5	2.3	3.3
Assuming 50% into new jobs	105.3	164.7	209.5	30	45	66	0.8	1.1	1.6

* Does not equal the sum of employees in the various industries and occupations because of rounding and because the category "all employees" can include those without a specific industry and occupation designation.

Source: Extracted from Robb and Robb (1987). The original data source was unpublished tabulations from Statistics Canada's Labour Force Survey.

variation in the job-creation potential across occupations and industries. This reflects a combination of the extent to which long hours are worked in each occupation and industry, and the number of persons working those long hours. About 40 per cent of the job-creation potential, for example, comes from managerial and professional groups because they work long hours and are substantial in numbers.

Clearly the job-creation potential of eliminating long hours of work is fairly substantial. That effect is reduced by roughly one-half by the fact that only about half of the workforce is likely to be affected by changes in legislation to reduce such long hours of work. It is reduced by roughly a further one-half by the fact that only about one-half of the reduction in overtime hours is likely to be translated into new jobs. Further, these reduced estimates are likely to be upper bounds. Although the reduced estimates of the job-creation potential are substantially below the unreduced numbers, they are not inconsequential, implying an employment growth of 0.8 to 1.6 per cent. These employment growth figures translate into a reduction of the unemployment rate of approximately the same amount.[2] That is, reducing long hours to 44 hours would lead to a 1.1 per cent increase in employment, assuming 50 per cent of the long hours are reduced and 50 per cent of these are translated into new jobs. This implies a reduction in the unemployment rate of approximately that same magnitude; that is, the unemployment rate in Ontario in 1985 would have been reduced from 7.8 per cent to approximately 6.7 per cent.

Eliminating Extra Hours Worked

The Labour Force Survey data also provide information on extra hours worked, defined as actual hours minus usual hours worked — a notion that corresponds more closely with overtime hours. Robb and Robb (1987, Table 8) indicate that the extra hours worked amounted to about 114,000 job equivalents in Ontario in 1985. (These are calculated as the total extra hours worked divided by the average workweek.) This is 2.8 per cent of the approximately 4 million employees in Ontario at that time. Alternatively stated, employment growth would have been approximately 2.8 per cent higher if people would not have worked any extra hours, defined as actual minus usual hours. This also implies that the unemployment rate would have been roughly 2.8 per cent lower, or 5.0 per cent rather than its actual level of 7.8 per cent.

As with the calculations for the job-creation potential from eliminating long hours, the job-creation potential from eliminating extra hours worked could be reduced by half because only about half of the workforce might be affected, and it could be reduced by one-half again to reflect the fact that only about half of the reduction in overtime hours is likely to be converted into new jobs.

Robb and Robb (1987, Table 8) also indicate that of the 114,000 job equivalents that would result from restricting extra hours, 73,000 or 64 per cent would come from reductions of extra hours from males and 41,000 or 36 per cent would come from reductions of extra hours from females. (Extra hours are defined as actual minus usual hours.) These numbers in turn represent 34 per cent of the 186,000 unemployed males and 27 per cent of the 154,000 unemployed females in the province in 1985. On average, the total new-job equivalents of 114,000 represented 33.5 per cent of the 340,000 unemployed in the province at that time.

Eliminating Overtime Hours

Statistics Canada's employer Survey of Employment, Payrolls and Hours provides data on overtime hours for hourly paid workers. This group more closely corresponds to persons who would be covered by the hours-of-work and overtime provisions of the Ontario Employment Standards Act, and the hours definition refers to overtime hours. For these reasons, the data give a better portrayal of the job-creation potential from reducing overtime hours.

Table 13.2 indicates the job-creation potential of eliminating all such overtime hours. As indicated for the industrial aggregate, in 1985 in Ontario, 1,733,900 hourly paid employees averaged 1.0 hours of overtime, for a total of 1,733,900 overtime hours. This is equivalent to 56,309 new jobs (total overtime hours divided by average straight-time hours, using the unrounded numbers, not the rounded numbers of the table).

That is, if all overtime hours were eliminated *and* they were converted to new jobs, this would result in 56,309 new jobs in Ontario. This is 3.2 per cent of the hourly paid employees in Ontario at that time, although it is 1.4 per cent of all employees (the latter being the comparable potential employment growth figures given in Table 13.1). The 56,309 potential new jobs represent 16.6 per cent of the 340,000 unemployed in Ontario at that time.

Since these figures represent overtime hours of hourly paid employees, there is no need to divide this figure by approximately one-half to reflect the fact that many of these overtime hours would not be subject to legislative initiatives (assuming no change in coverage of the Act). It would, however, be appropriate to adjust this figure by about one-half to reflect the fact that only about 50 per cent of these reduced overtime hours would likely be translated into new jobs, for reasons discussed previously. This implies the equivalent of 28,155 new jobs, representing

Table 13.2

Potential Job Creation from Complete Elimination of Overtime, Hourly Paid Employees, Ontario, 1985

Industry	Number of Hourly Paid Employees	Average Overtime Hours	Average Straight Time Hours	New Jobs with Zero Overtime[a]	Per cent Employment Increase[b]
Forestry	5,200	2.2	38.4	304	5.8
Mines	18,900	1.8	38.6	884	4.7
Manufacturing	566,100	2.0	37.9	29,380	5.2
Construction	112,500	1.1	37.3	3,215	2.9
Subtotal, Goods-Producing Industries	703,600	1.8	37.8	33,630	4.8
Transportation, communications	92,500	1.6	37.4	3,942	4.3
Trade	378,400	0.5	27.9	6,547	1.7
Finance	29,600	0.5	26.3	581	2.0
Commercial	515,900	0.3	26.6	6,457	1.3
Subtotal, Services	1,031,300	0.5	28.1	18,945	1.8
Total, All Industries	1,733,900	1.0	32.1	56,309	3.2
Assuming 50% into new jobs	1,733,900	1.0	32.1	28,155	1.6

Totals may not add due to rounding.

[a] Calculated as number of employees times average overtime hours divided by average straight-time hours. The numbers in this column are based upon the unrounded numbers and, hence, will differ slightly from calculations based upon the rounded numbers of the original table.

[b] As per cent of hourly paid employees as given in this table. These estimates would be slightly less than one-half if expressed as a per cent of all employees.

Source: Robb and Robb (1987, Table 9).

1.6 per cent of the growth of paid employment or 0.7 per cent of total employment.

Raising the Overtime Premium to Double Time

As discussed in Chapter 12, the effect on job creation of an increase in the overtime premium depends, first, on the effect that increasing the overtime premium has on reducing overtime hours and, second, on the extent to which reductions in overtime lead to new-job creation. Robb and Robb (1987) provide such estimates of job creation for Ontario, based upon estimates of the conversion of overtime hours into new jobs, as given in Ehrenberg and Schumann (1982) and discussed in Chapter 12.

Assuming No Employment Offsets from Higher Labour Cost

Table 13.3 illustrates the job-creation potential for Ontario associated with raising the overtime premium from time-and-one-half to double time after the average workweek that is worked on a straight-time basis. As indicated in Table 13.2, for 1985 this was approximately 37.8 hours in the goods-producing industries and 28.1 hours in services, for an overall average of 32.1 straight-time hours.

For example, assuming a one per cent increase in the overtime premium is associated with a 0.5 per cent reduction in overtime[3] (column 1 of Table 13.3) implies that a 28.6 per cent increase in the overtime premium[4] associated with going from time-and-one-half to double time is associated with a 14.3 per cent (0.5 × 28.6) reduction in overtime hours. In the goods-producing industries, approximately 703,600 workers averaged 1.8 hours of overtime, for a total of 1,266,480 hours of overtime (Table 13.2). A 14.3 per cent reduction in that amount of overtime, associated with going to double time, would imply a reduction of 182,715 hours as given in column 2 of Table 13.2 (based on the unrounded numbers, not the rounded ones in the table). This is equivalent to 4,826 new jobs (column 3), based on the average straight-time workweek of 37.8 hours (Table 13.2). These new jobs are equivalent to a 0.7 per cent (seven-tenths of one per cent) increase in hourly paid employment (column 4). Although not shown in the table, this would be equivalent to a 0.3 per cent (three-tenths of one per cent) increase in total employment.

Table 13.3

Potential Job Creation from Increasing Overtime Premium from Time-and-One-Half to Double Time After Standard Hours, Ontario, 1985

Industry	Per Cent Decrease in Overtime from one Per Cent Increase In Premium (1)	Decrease in Weekly Overtime Hours From Increase to Double Time (2)	New Job Equivalents (3)	New Job Equivalents as Per Cent of Initial Employment (4)	Offset of Jobs Due to Increased Labour Cost (5)	Net Job Increased as Per Cent of Initial Employment (6)
Forestry	0.5	1,667	43	0.8	31	0.2
Mines	0.5	4,872	126	0.7	90	0.2
Manufacturing	0.5	159,035	4,197	0.7	2,970	0.2
Construction	0.5	17,140	459	0.4	333	0.1
Subtotal, Goods-Producing Industries	0.5	182,715	4,826	0.7	3,424	0.2
Transportation & communications	0.755	31,762	850	0.9	324	0.6
Trade	0.755	39,450	1,412	0.4	550	0.2
Finance	0.755	3,299	125	0.4	49	0.3
Commercial	0.755	37,095	1,393	0.3	545	0.2
Subtotal, Services	0.755	111,606	3,781	0.4	1,467	0.2
Total, All Industries	n.a.	294,321	8,607	0.5	4,891	0.2

n.a. = not applicable. Totals may not add due to rounding.
Source: Robb and Robb (1987, Table 10).

Employment Offsets Due to Higher Labour Costs

The previous calculations assume that there was no overall employment reduction associated with the higher labour cost emanating from the higher overtime premium. Robb and Robb (1987) provide estimates of the employment offsets due to higher labour costs, based upon a methodology outlined in Ehrenberg and Schumann (1982). That methodology basically involves three steps: first, calculating the expected reduction in overtime hours associated with increasing the overtime premium from time-and-one-half to double time;[5] second, calculating the increase in average labour cost to reflect the new overtime premium applied to the reduced number of overtime hours; third, multiplying the percentage increase in wage costs by the elasticity of the demand for labour to indicate the percentage reduction in the demand for labour that is associated with a one per cent increase in labour cost. This yields the percentage reduction in employment that is associated with the higher labour cost emanating from the increased overtime premium.

Robb and Robb (1987) calculate that such employment offsets for Ontario would average about 57 per cent, with approximately 70 per cent for the goods-producing sector and 40 per cent for the service sector. These offsets due to the adverse employment effect of the higher labour cost are given in column 5 of Table 13.3. Column 6 gives the net employment-enhancing effect after subtracting the job losses due to higher labour costs from the job gains if all overtime hours were converted to new jobs. Clearly the net increase is substantially smaller, amounting to an increase in paid employment of about 0.2 of one per cent, in contrast to the gross 0.5 of one per cent increase. The net increase is about 3,716 jobs compared with the gross increase of 8,607 jobs.

The larger employment offset for the goods-producing sector occurs both because average overtime hours tend to be higher in the goods-producing as opposed to service sector, and because it is more difficult to reduce overtime hours in the goods as opposed to service sector. This makes the labour cost increase, associated with the higher overtime premium, higher in goods-producing than in the service sector. Hence, there is a larger overall employment reduction in the goods-producing as opposed to service sector.

Robb and Robb (1987, Table 11) also illustrate how these calculations are sensitive to some of the particular assumptions that go into them. For example, they re-calculate, assuming that a one per cent increase in the overtime premium gives rise to a one per cent reduction in overtime hours (rather than the previously used 0.5 per cent reduction in the goods-producing industries and the 0.755 per cent reduction in services). They take this as providing an extreme upper bound in the reduction of overtime, based on the empirical evidence on this response that exists in the literature. Their calculations indicate a much more favourable job-creation possibility, with the potential number of new jobs increasing employment by 0.8 per cent before any cost-induced offsets are considered, and by 0.7 per cent on a net basis after the employment reductions in response to the higher labour costs. Nevertheless, the potential number of new-job equivalents is small, amounting to 14,660 if all overtime reductions were converted to new jobs, and 11,433 net new jobs after the employment reduction of 3,227 emanating from the cost increase.

Clearly, the calculations illustrate that substantial employment offsets are likely to occur as a result of the higher labour cost associated with the increased overtime premium. That is, the increased premium does discourage overtime, and this in turn can lead to new jobs. The higher premium also increases labour costs, however, and this reduces overall employment. As noted, the Ontario evidence suggests employment offsets of approximately 70 per cent in the goods-producing sector and 40 per cent in services, averaging about 57 per cent. The offsets are somewhat smaller if overtime hours are more responsive to the overtime premium. From these calculations, an average employment offset of 50 per cent would appear to be a reasonable estimate for Ontario, although there is likely to be considerable variation about that number.

Double Time After 44 or 48 Hours

The previous calculations applied to an increase in the overtime premium after the average straight-time workweek in each of the Ontario industries. Table 13.4 also gives the job-creation potential of increasing the overtime premium from time-and-one-half to double time after 44 hours as well as 48 hours. Both the gross and net figures are presented; the latter subtracts the employment offset that occurs because of the reduced employment associated with the higher labour costs emanating from the higher overtime premium.

Clearly, the job-creation potential is reduced substantially when the double-time premium is to apply only after 44 hours or 48 hours. The gross number of new-job equivalents goes from 8,607 new jobs if the double-time premium applies after the standard hours, to 5,677 jobs after 44 hours, to 3,665 jobs after 48 hours. That is, it drops by about one-third with each of those changes.

Employment Subsidy

Although an increase in the overtime premium can reduce overtime and hence create potential new jobs, its job-creation potential is limited by the fact that it also increases labour costs, and this in turn reduces the overall demand for workers. It is difficult to create employment by policies that increase labour costs. Since the firm's use of overtime depends upon the relationship between the overtime wage premium and the fixed costs of hiring a new worker, an alternative policy to encourage the hiring of new workers is to reduce their fixed costs rather than increase the overtime premium.

Robb and Robb (1987) estimate the job-creation potential of an employment subsidy of $400 for each additional new worker, to offset some of the fixed costs associated with hiring the new worker. The $400 estimate is what they calculate as an approximation of the additional cost to the firm if the overtime premium were increased from time-and-one-half to double time after standard hours. Therefore, it not only increases the ratio of variable wage costs to fixed costs (as would increasing the overtime premium), but it would also lower labour costs to the firm.

Such an employment subsidy to offset some of the fixed costs of hiring additional workers would have two reinforcing effects on job creation. First, it would discourage the use of overtime hours because fixed costs of hiring new workers have fallen relative to the wage costs of working existing workers overtime. Second, the reduced labour costs would increase the demand for labour in general. That is, the employment subsidy reduces rather than increases labour costs, and this enhances the job-creation potential of the overtime reductions.

Robb and Robb (1987, Table 14) estimate the job-creation potential of a $400 employment subsidy to be about 13,421 jobs in Ontario. This represents a 0.8 of one per cent increase over the initial level of hourly paid employment. Approximately 1,479 of the new jobs would come about because of the reduced use of overtime, and 11,942 of the jobs would be created because of the lower labour costs of hiring new workers as opposed to raising the overtime premium; the former option also reduces overall labour costs, and such a reduction has a substantial effect on new employment. However, the subsidy obviously has to come from somewhere, which means cost implications elsewhere; and this could offset some of the employment-enhancing effect of the subsidy. Also, subsidies for the hiring of new workers can lead to other problems, such as the possibility that employers will lay off existing workers to create vacancies for subsidized new workers. Nevertheless, consideration of such subsidies does highlight the enhanced

Table 13.4

Potential Job Creation from Increasing Overtime Premium from Time-and-One-Half to Double Time After Various Hours, Ontario, 1985

Industry	After Standard Hours		After 44 Hours		After 48 Hours	
	Gross Job Increase	Net Job Increase	Gross Job Increase	Net Job Increase	Gross Job Increase	Net Job Increase
	Per Cent Increase over Initial Level of Hourly Paid Employment					
Forestry	0.8	0.2	0.6	0.2	0.4	0.1
Mines	0.7	0.2	0.5	0.1	0.3	0.1
Manufacturing	0.7	0.2	0.5	0.1	0.3	0.1
Construction	0.4	0.1	0.3	0.1	0.2	0.1
Subtotal, Goods-Producing Industries	0.7	0.2	0.4	0.1	0.3	0.1
Transportation, communications	0.9	0.6	0.6	0.4	0.4	0.3
Trade	0.4	0.2	0.3	0.2	0.2	0.1
Finance	0.4	0.3	0.3	0.2	0.2	0.1
Commercial	0.3	0.2	0.2	0.1	0.1	0.1
Subtotal, Services	0.4	0.2	0.3	0.2	0.2	0.1
Total, All Industries	0.5	0.2	0.3	0.1	0.2	0.1
New Jobs	8,607	3,716	5,677	2,502	3,665	1,656

Source: Robb and Robb (1987, Tables 10, 12, 13).

employment creation that can occur from policies that lower rather than raise labour costs.

POTENTIAL JOB CREATION FROM VARIOUS POLICIES SUMMARY

Table 13.5 provides a summary of the potential employment-enhancing effects of the various overtime policies discussed in the chapter. Clearly, outright prohibitions on all long hours could create a substantial number of job equivalents, and this in turn could increase employment and reduce unemployment. Nevertheless, it is likely that at most one-half of the workforce would be affected by such legislative prohibitions, and only about half of the reduced overtime hours would be translated into new jobs. When these factors are considered, the job-creation potential of such restrictions is reduced considerably, roughly to one-quarter of the original potential. For example, a reduction of long hours to 44 hours could be converted into a 1.1 per cent increase in employment which implies a corresponding reduction of approximately 1.1 percentage points in the unemployment, rate. This is not an inconsequential figure; nevertheless, it would obviously not eliminate unemployment, *even if* all such long hours that potentially could be affected could be eliminated.

Policies to eliminate *all* overtime hours also would likely increase total employment and reduce unemployment by about 0.7 of one per cent — not an inconsequential figure, but one that would reduce only a small amount of unemployment. Again, this calculation also assumes that all such overtime hours potentially covered by employment standards legislation could be eliminated, a result that would require a considerable amount of policy intervention.

Raising the overtime premium to double time after various hours is unlikely to have much of an impact on creating new jobs and ultimately reducing unemployment. Even an introduction of a double-time premium after the standard workweek would reduce unemployment by only about two-tenths of one percentage point before any employment offsets occurred, and this figure would be cut in half by the adverse employment offsets resulting from the higher labour costs.

The job-creation potential of many of the previously discussed policies is offset considerably by the fact that restrictions on overtime would likely increase labour costs, and this in turn would reduce the demand for labour. Employment subsidies to offset some of the fixed costs associated with hiring new workers would reduce overtime because new workers would be

Table 13.5

Summary of Potential Job Creation From Various Alternative Overtime Policies, Ontario, 1985

Policy	Job Equivalents	Employment Growth	
		As Per Cent of 4,003,100 Employees	As Per Cent of 1,733,900 Hourly Paid Employees
Reducing long hours to 40 hours	264,000	6.6	n.a.
Assuming 50% affected	132,000	3.3	n.a.
Assuming 50% into new jobs	66,000	1.6	n.a.
Reducing long hours to 44 hours	181,000	4.5	n.a.
Assuming 50% affected	90,500	2.3	n.a.
Assuming 50% into new jobs	45,250	1.1	n.a.
Reducing long hours to 48 hours	119,000	3.0	n.a.
Assuming 50% affected	59,500	1.5	n.a.
Assuming 50% into new jobs	29,750	0.8	n.a.
Eliminating extra (actual-usual) hours	113,918	2.8	n.a.
Assuming 50% affected	56,959	1.4	n.a.
Assuming 50% into new jobs	28,480	0.7	n.a.
Eliminating overtime of hourly paid	56,309	1.4	3.2
Assuming 50% into new jobs	28,155	0.7	1.6
Adjusting overtime premium from 1.5 to 2.0 after standard workweek	8,607	0.20	0.5
Net, after employment offset	3,716	0.09	0.2
Adjusting overtime premium from 1.5 to 2.0 after 44 hours	5,677	0.10	0.3
Net, after employment offset	2,502	0.06	0.1
Adjusting overtime premium from 1.5 to 2.0 after 48 hours	3,665	0.09	0.2
Net, after employment offset	1,656	0.04	0.1
Fixed cost employment subsidy of $400 per new hire	13,421	0.3	0.8

n.a. = not applicable.

Source: Summary of Chapter 13 text.

relatively cheaper than overtime hours, and overall employment would expand because of the lower labour cost. Such a subsidy of about $400 per new hire could create about 13,000 new jobs and reduce unemployment by about one-third of one percentage point. The subsidy, however, could also create problems; for example, providing incentives to create vacancies, through layoffs of existing workers, that would allow employers to hire new workers and thus be eligible for the subsidy. Nevertheless, such employment subsidies do highlight the employment-enhancing potential of policies that reduce rather than increase labour costs.

Table 13.5 may leave the impression that the greatest potential for job creation will come from restrictions on long hours; for example, through the permit system. Other policies, such as increasing the overtime premium or instituting employment subsidies, do not seem to have the potential for substantial job creation. This may be a deceptive impression, however, since outright restrictions on long hours would be very difficult to establish and enforce. As indicated in Chapter 5, it is very difficult to ensure compliance under a permit system if neither employers nor employees have a self-interest in ensuring compliance.

Overall, it appears that the job-creation potential of reducing overtime hours is not likely to be zero. It is also unlikely, however, to be very substantial for most feasible amounts of overtime reduction. Feasible restrictions on the use of overtime will not be a panacea for our unemployment problems. In a world where unemployment has shown remarkable resiliency to so many policy initiatives, however, restrictions on overtime cannot be dismissed as being completely ineffective as a job-creation policy. Their effect is likely to be small, but not zero.

Notes

1. The total number of long hours is calculated as the number of persons working long hours times the average amount of long hours. The latter is calculated as the midpoint of the range of the long hours minus the cut-off — of 48, 44, and 40 hours — beyond which additional hours are considered long hours.

2. The unemployment rate is defined as the labour force minus employment divided by the labour force. If employment grows by one per cent, this is slightly less than one per cent of the labour force, which includes both employment and unemployment. This means that the unemployment rate would fall by slightly less than one per cent if employment grows by one per cent. This assumes, of course, that labour force participation rates do not change as a result of the reduction in unemployment.
3. This 0.5 elasticity of overtime hours with respect to the overtime premium is the figure that Robb and Robb (1987) take as representative of the estimates given in Ehrenberg and Schumann (1982) for the goods-producing industries. For the service industries, Robb and Robb use the elasticity estimate of 0.755 as representative.
4. The 28.6 per cent figure is arrived at by expressing the change in the overtime premium of 0.5 (i.e., 1.5 to 2.0) as a per cent of the average of 1.5 and 2.0 (i.e., 1.75). Robb and Robb (1987) discuss alternative calculations of this percentage change, such as (2.0-1.5)/1.5 = 0.33, the estimate used in Ehrenberg and Schumann (1982).
5. This is calculated as the elasticity of overtime hours with respect to increases in the overtime premium (typically around -0.6 in Ehrenberg and Schumann, 1982) times the percentage increase in the overtime premium (e.g., approximately a 0.33 increase associated with going from 1.5 to 2.0). The product of these two terms (i.e., -0.6 × 0.33 = -0.2) is the percentage reduction in overtime that would result from increasing the overtime premium from 1.5 to 2.0.

CHAPTER 14

Alternatives to Overtime and Alternative Policies to Reduce Unemployment

If overtime is to be restricted in the hope of creating new jobs and hence reducing unemployment, it is obviously important to know if viable alternatives exist to replace overtime, and if still other alternative policies could more effectively reduce unemployment. On the latter point, it is important to see where overtime restrictions fit on the list of policies to reduce unemployment.

Alternatives to Overtime

In any public policy decision to restrict the use of overtime, consideration must be given to the availability of alternatives to the use of overtime. In the public meetings organized by the Task Force, and in the briefs presented, employers consistently emphasized that employees working the overtime hours could not simply be replaced by other workers, let alone members of the unemployed. Organized labour, in contrast, emphasized that much of the overtime was on a regular basis, that it was often carried out by workers who did not have unique skills, and that it was often worked in establishments where those on layoff could have done the overtime work.

In all likelihood, each of these positions contains an element of truth. Overtime workers are likely to differ from other workers; if they do not, then employers would put less emphasis on the need for flexibility to utilize overtime work. Rather, employers would use the other workers, given that overtime entails a costly overtime premium and possible fatigue effects. The differences, however, may be small and give rise to a *desired flexibility*, but not to the *necessity* of using overtime hours. That is, the next best alternative to the use of overtime may be only marginally less attractive than overtime hours. As well, the substitution possibilities may, in the longer run, be considerable. For example, a slight change in the design of a job or the introduction of a new shift may enable other workers to do a job that otherwise is performed by employees working overtime. Or a slight upgrading of existing employees may enable them to do the work, which in turn may create a vacuum effect — freeing up their jobs to be carried out by the unemployed or by workers on layoff. Obviously, training the unemployed may facilitate their doing the overtime work directly.

The fact that employers often appear reluctant to provide such training suggests that the costs of training exceed the benefits of having the new trainees do the work that was previously done on an overtime basis. This may be true, but there may also be market failures that prevent those who bear the cost from appropriating the full benefits. In particular, firms may be reluctant to undertake such generally usable training simply because they may lose the trainees afterward to other firms that bid them away. In such circumstances, individual workers should be willing to pay for the training because they reap the benefits in the form of a higher post-training wage, although in actuality they may not be able to finance the training costs.

Although the training issue is beyond the mandate of the Task Force, it is mentioned here simply to illustrate that overtime cannot be discussed in isolation, independent of the mechanisms that serve as alternatives to the use of overtime. A viable training system may well reduce the need to rely on overtime to fill certain demands, even those associated with short-term needs. However, private training expenditures also represent a major quasi-fixed cost to employers and are among the factors encouraging the tendency to employ a well-trained worker for longer hours rather than hire a relatively new employee.

Although there are numerous alternatives to the use of overtime hours, the fact still remains that these alternatives are less attractive to employers. Otherwise, they would not use overtime, given the costly overtime premium and possible fatigue effects that set in after long hours. If, however, these alternatives are only marginally less attractive from the perspective of the employer, and if a number of alternatives could be developed that involve the use of unemployed workers, then there may be some justification to discourage overtime and encourage the alternatives. And if the cost to the employer of utilizing additional workers is only marginally higher than the cost of utilizing overtime, then socially we may well prefer to discourage the use of overtime, encourage the use of new employment, and reap the social benefits.

In a study for the Economic Council of Canada, Gordon Betcherman (1982, p. 34) provided evidence on the various alternatives that employers use to meet human resource shortages. In descending order of importance they are: (1) provide training; (2) use overtime; (3) search outside region; (4) lower the qualifications; (5) improve wages; (6) curtail production; (7) subcontract; (8) search outside Canada; and (9) substitute capital. Clearly, overtime is an important mechanism for meeting labour shortages.

An important issue, however, is whether some of these alternatives are socially more desirable than others. We know that employers tend to use a mix of these alternatives, reflecting their relative assessments of the costs and benefits. From a social perspective, however, we may want to encourage employers to use one mechanism less frequently than others. For example, curtailing production is likely to be the most undesirable alternative in terms of job creation, while searching outside the region may reduce unemployment somewhere, but not in the particular region; similarly, searching outside Canada may do little to reduce unemployment in Canada.

In a sense, there may be social gains (at least in terms of job creation and unemployment reduction) in reordering the list of alternative ways of meeting labour shortages. Such job-creation benefits are likely to be greater, for example, if curtailing production were at the bottom of the list and overtime nearer the bottom than the top.

Even here, however, caution must be exercised because these alternatives may be interrelated in a complex fashion. For example, restricting the use of overtime (which would move it toward the bottom of the list) may actually curtail production if overtime removed a crucial production bottleneck. This in turn could have even more deleterious effects on job creation. The extent to which new hires can serve as an alternative to overtime hours depends in large part on the extent to which the potential new recruits possess the requisite skills to do the equivalent work. Unfortunately, we have very little direct evidence on this point. In economic terms, we do not know the elasticity of substitution between overtime hours and new employment. As indicated in the previous chapter, all we know is that a one per cent increase in the overtime premium is associated — very roughly — with about a 0.6 of one per cent reduction in overtime hours. The fact that new employees are not perfect substitutes for overtime hours is a component of that relationship, but one of unknown magnitude.

In addition, there is some evidence on the occupational distribution of the unemployed relative to the distribution of overtime hours. Robb and Robb (1987, Table 8) indicate that for broad industry and occupation groups, there are invariably many more unemployed workers than job equivalents of overtime hours. Nevertheless, as they indicate, this does not mean that the unemployed are in the right place or have the right skills to do the job if overtime is eliminated.

Ehrenberg and Schumann (1982, Chapter 4), in their calculations for the United States, find that when more detailed industry and occupation categories are used and when comparisons are made within the same region, skill mismatches between the unemployed and those working overtime work become more prominent. They conclude (p. 43) that "skill mismatches of the distributions of those working overtime and the experienced unemployed may well seriously constrain the creation of new jobs in response to an increase in the overtime premium in these categories." Their analysis, however, suggests that skill mismatches will constrain but not eliminate the job-creation potential of overtime reductions.

Alternative Policies to Reduce Unemployment

There may be numerous alternatives (many in subtle form) to the use of overtime hours, and similarly numerous alternatives exist for reducing unemployment. Obviously, aggregate demand policies (for example, monetary policy, fiscal policy, and exchange rate management) can be important, and some may argue that they are the only appropriate vehicle for dealing with unemployment. Nevertheless, there appear to be numerous reasons for not relying exclusively, or perhaps even largely, on aggregate demand policies.

First, monetary policy and federal deficit policies emanating from federal tax and expenditure policies obviously are beyond the control of the Ontario government. Second, whether or not aggregate demand policies could *theoretically* lead to full employment, in actual fact they have not done so in recent years. It would seem irresponsible not to try to reduce unemployment by others means on the presumption that aggregate demand policies are sufficient. Third, there is the possibility that we have a new type of unemployment that cannot be dealt with adequately by conventional policies, and that new initiatives — particularly worktime reductions as a form of worksharing — may be necessary. Although this is not the forum to resolve that issue, it does seem reasonable to argue that the current high levels of unemployment have shown a marked resiliency to being reduced and that in such circumstances it is not inappropriate to consider alternative policies to reduce unemployment. Such alternatives include worksharing policies, such as restrictions on overtime.

In addition to aggregate demand policies, the conventional policy initiatives to reduce unemployment include policies to reduce structural and frictional unemployment. These can include a host of initiatives relating to training, mobility, and improving accessibility of labour market information — policies designed to improve the match between unemployed workers and unfilled jobs. The viability of these policies depends upon their costs relative to their benefits in terms of reducing unemployment. As with aggregate demand policies, such initiatives to reduce structural and frictional unemployment do not seem to have cured our unemployment problems. Again, this focusses attention on new alternatives, including worksharing options.

Worksharing and the Lump-of-Labour Fallacy

Economists tend to express concern over the viability of worksharing policies to reduce unemployment. They often argue that it is a fallacy (termed the "lump-of-labour fallacy") to assume that there are a fixed number of jobs in the economy and that, therefore, the job done by one worker (someone working overtime, for example) means that this worker is taking the job from another. Although the number of jobs in a particular establishment may be fixed, this is not true for the economy as a whole. When a worker takes a particular job, that means the particular job is not available for another worker. Nevertheless, the worker taking that job presumably now has more income, and so will be spending more money and creating jobs elsewhere. In addition, that worker may be vacating another job, which can affect the job prospects of others. Also, the worker may now be eliminating a structural bottleneck (and this may be relevant especially in the overtime area), which in turn may open up other, related jobs. Finally, if a worker does not do a given job (for example, by not working overtime), then the vacated work may not necessarily find itself carried out by another individual in the same locality; rather, it may be filled by production done elsewhere, including another country.

In essence, the economy is best characterized as dynamically changing and always in a state of flux, not as static and having a fixed number of jobs. Perhaps this is best illustrated by the case of women participating in the labour market. It may be true that if a woman does a particular job, then that specific job would not be available to be filled by a man. But even if that should matter, it is a fallacy to assume that "women are taking the jobs of men" since that would assume that there are a fixed number of jobs in the economy, and that for every woman who enters the labour market there would be one less job for a man. All this ignores the fact that when women enter the labour market they earn income, which leads to spending and new jobs elsewhere. In addition, they vacate jobs in the household, which leads to increased demand for other services (for example, daycare) as well as goods (household appliances, a second car). This again leads to jobs elsewhere.

Despite such a view, the ever-changing economy does create unemployment that most observers would characterize as a social problem. In the short run at least, there may be a scarce number of jobs to allocate; and in such circumstances, worksharing may be a viable (and, one hopes, temporary) mechanism.

Worksharing can occur in a variety of forms, some of which seem more socially acceptable than others: overtime restrictions; unemployment-insurance-assisted worksharing; early retirement; longer paid vacations; paid educational leaves; maternity leaves; unpaid leaves; and delayed entry of school-age youths into the labour market. Each of these can vacate work that can be filled by others. Each of these also has other consequences.

Paid educational leaves may be very costly. Raising the school-leaving age may mean that some youths are compelled to stay in an environment that really does not do them or their classmates any good. Compelling early retirement or allowing mandatory retirement may be interpreted as age discrimination. Restricting overtime may be costly to firms and to those workers who rely on overtime income.

Clearly, there are potential adverse consequences associated with almost any form of worksharing. The issue then becomes one of weighing those adverse consequences against the possible benefits in terms of short-term job creation. This means facilitating those worksharing schemes that are likely to have the greatest job-creation potential and that have the least adverse consequences.

At a minimum, this means removing barriers that otherwise inhibit parties from voluntarily reducing their worktime. For example, in the debate over mandatory retirement there seems to be a consensus that it would be desirable to facilitate the taking of early retirement as well as reduced worktime prior to retirement, or perhaps to encourage continued work on a part-time basis. With regard to overtime, it would seem desirable to remove unintended barriers that inhibit employers from hiring new workers while encouraging them to work their existing employees long hours.

Reducing Fringe Benefit Barriers to Employment Creation

In his background report for the Task Force, Reid (1987b) identifies a number of policy changes that would reduce barriers to new-job creation. Basically, the barriers occur because many fringe benefits contain components of quasi-fixed costs that are incurred each time a new employee is hired but are not increased (or are increased by an amount that is less than proportionate) when existing employees are worked longer hours. The quasi-fixed costs are incurred when fringe benefit costs are specified on the basis of dollars per employee rather than as dollars per hour or as a per cent of earnings.

Table 14.1 indicates the importance of various fringe benefits in the compensation package of Canadian workers. Clearly, they are substantial, amounting to almost 50 per cent of straight-time pay. Reid (1987b) reviews each of these fringe benefits and indicates the extent to which they create quasi-fixed costs (and hence discourage new hires and encourage long hours). Where they have elements of quasi-fixed costs, he suggests ways in which they could be converted to variable costs and hence not have the bias against worksharing.

For example, the holiday pay provisions of the Ontario Employment Standards Act require the employer to provide 7 paid holidays each year and to pay the employee "regular wages" for each public holiday. This creates a fixed cost since the paid holidays are provided to each new employee and the costs are the same whether the employee works a 40- or a 50-hour week. That is, these costs are not increased if an employee works overtime; but they are incurred if a new employee is hired (and has worked at least 3 months). This bias toward long hours and against new hires could be removed by modifying section 26(2) of the Act to read "...and pay to the employee an amount not less than 5.0 per cent of his earnings in the 4 weeks preceding the holiday." The 5.0 per cent of 4 weeks of earnings is the equivalent of one day's pay (0.05 × 20 days = one day). Requiring that paid holidays be reimbursed as a per cent of earnings rather than as a per cent of regular wages essentially converts this benefit from a fixed cost to a variable cost (that is, from one that is independent of hours worked to one that varies proportionately with hours of work). When reimbursement is based on a per cent of earnings, the reimbursement increases as overtime and, hence, earnings, increase. In fact, the reimbursement is at the same "penalty rate" as the overtime premium. This requirement could be extended to all holiday provisions, not just to the statutory holidays.

This change would bring the paid holiday provision in line with the vacation pay provisions, which require compensation as a per cent of earnings. That is, the legislation requires at least 2 weeks' vacation per year to be compensated at 4 per cent of earnings in the prior 12 months. This reimbursement is equivalent to 2 weeks of pay (0.04 × 50 weeks = 2 weeks). If overtime is worked in that year, then compensation for vacation pay also increases. Although the vacation pay requirements *in legislation* are a variable cost, this may not be so under collective agreements or other employment contracts. Hence, consideration could be given to amending the Employment Standards Act to require that each week of paid vacation time be compensated at the rate of 2 per cent of the employee's earnings in the 50-week period preceding the vacation. The 2 per cent figure is the equivalent of one week's pay (0.02 × 50 weeks = one week).

Similarly, employment standards legislation could require paid sick leave or paid personal leave to be compensated at a rate proportionate to the employee's earnings in the preceding 4 weeks. The exact rate would have to be determined by the collective agreement or personnel policy. Specifying the daily rate as 5 per cent of earnings in the last 4 weeks would imply full paid compensation (0.05 × 20 days = one day), a benefit that exists in about one-half of current sick leave plans.

Similarly, too, severance pay and retirement allowances typically involve a specified number of days per year of service (for example, 5 days pay per year of service). Such allowances are quasi-fixed since they will be associated with hiring a new worker, but they will not increase if an individual works additional hours. Again, such plans can be converted from quasi-fixed to variable costs by requiring that each day of compensation be at a rate not less than 5 per cent of the employee's earnings in the preceding 4-week period.

Employer contributions to Workers' Compensation (WC), Unemployment Insurance (UI), and the Canada Pension Plan (CPP) are specified as a per cent of earnings up to a ceiling level of earnings per employee. Therefore, below the ceiling, contributions increase proportionately with hours worked and are a variable cost. Above the ceiling, however, contributions are fixed at the ceiling level and the expenditure becomes a quasi-fixed cost. In such a case the WC, UI, or CPP premium provides an incentive

Table 14.1

Employer Expenditure on Benefits, Canada, 1984

	Per Cent of Employees Covered by Benefit	Mean Dollars Per Employee/ Year	Mean Per Cent of Pay for Straight Time Worked
Pay for Straight Time Worked	100.0	22,377	100.0
Paid Time Away from Duty			
Paid Holidays	99.7	1,182	5.3
Paid Vacations	99.7	2,020	9.0
Paid Sick Leave	95.9	492	2.2
Paid Personal Leave	75.5	149	0.7
Paid Rest Periods	90.8	1,060	4.7
Straight-Time Pay	100.0	27,280	121.9
Pay Supplements			
Overtime and Holiday Work Pay	97.2	1,120	5.0
Shiftwork Compensation	91.0	169	0.8
Financial Benefits			
Severance Pay	82.5	39	0.2
Retirement Allowances	87.1	138	0.6
Gross Pay	100.0	29,335	131.1
Legislated Benefits			
Workers' Compensation	95.0	361	1.6
Unemployment Insurance	99.0	567	2.5
Canada/Quebec Pension Plans	98.7	316	1.4
Group Life Insurance and Related Plans	87.9	153	0.7
Health Insurance Plans			
Provincial Health Care[a]	98.8	146	0.7
Quebec and Manitoba Health Care	90.6	246	1.1
Supplementary Health Insurance	91.6	100	0.4
Dental Care Plans	96.4	166	0.7
Salary Continuation Plans			
Sickness Indemnity Insurance	98.5	49	0.2
Combined Sick Leave and Sickness Indemnity	95.6	91	0.4
Long-Term Disability Insurance	93.1	113	0.5
Supplementary Unemployment Insurance	97.5	12	0.1
Private Pension Plans	89.9	1,879	8.4
Total Compensation		33,534	149.9

[a] Provincial health care based on all participating establishments including establishments located in provinces that do not levy premiums.

Source: Reid (1987b, Table 5). The original data source was Pay Research Bureau (1984), *Employee Benefits and Conditions of Employment in Canada 1984*, Table 30-B, p. 155.

for the employer to work existing employees longer hours (since no additional contributions are required) rather than hire new employees (for whom additional contributions would be required.

Employer contributions to WC, UI, and CPP could be converted to a pure variable cost by simply removing the ceilings. Such a change, however, would ignore the original purpose of the ceilings, which is to prevent employees with very high incomes from receiving an unseemly high level of benefits from WC, UI, or CPP. Rather than eliminate the ceilings, an alternative solution is to prorate the ceilings according to the number of hours worked. If, for example, the UI ceiling of $490 per week in 1986 applied to a full-time employee working 40 hours per week, the ceiling would be reduced to $245 for a jobsharing employee working 20 hours per week and increased to $735 for an employee working 60 hours per week.

Prorating the ceiling according to hours worked is equivalent to specifying a ceiling in terms of *hourly* earnings instead of weekly earnings. In the UI example, the ceiling level for hourly earnings would be $490/40 = $12.25 per hour. For employees with hourly earnings above the ceiling, employer contributions would vary proportionately with hours worked, converting UI contributions to a pure variable cost.

Changing the structure of the Workers' Compensation premium to prorate the ceiling on earnings subject to contribution is within the jurisdiction of the Ontario government, but prorating the earnings ceilings on UI and CPP would require the cooperation of the federal government.

Group life insurance, sickness indemnity insurance, and long-term disability insurance plans typically specify an insured amount that is a per cent of salary. To ensure that premiums for these insurance plans are a variable cost rather than a quasi-fixed cost, it is necessary to relate benefits and premiums to the previous year's total earnings (including overtime pay) rather than regular earnings. Because the premium structure is determined by an independent insurance carrier, however, legislative intervention may need to be more complex than a simple amendment to the Employment Standards Act.

Employer contributions to some pension plans are a percentage of the employee's earnings and hence are a variable cost, creating no bias toward long hours rather than new hires. This is the case with those defined contribution plans that frequently require contributions based on a per cent of the employee earnings. It is also the case with those defined benefit plans in which the level of benefits is specified as a percentage of earnings over the average of the employee's entire career.

These examples are meant to illustrate the extent to which many fringe benefits contain elements of quasi-fixed costs that can deter new hiring and encourage employers to work their existing employees long hours. In many circumstances, this bias against worksharing and shorter hours can be removed by changing the nature of employers' contributions to be payroll related or hours related, rather than person related. An overall assessment of the pros and cons of doing so in each particular case is beyond the scope of the Task Force. Such changes, however, would have the benefit of removing the byproduct (likely an unintended one) of encouraging overtime at the expense of new hires. For this reason, such policies should be given serious consideration.

SUMMARY OF ALTERNATIVES

- *If overtime is to be restricted to reduce unemployment, it is important to know if viable alternatives exist to replace overtime, and if alternative policies would be more effective in reducing unemployment.*
- *Although overtime work provides employers with desired flexibility, alternatives to overtime also exist, such as shiftwork, job redesign, and upgrading and training. These alternatives can result in new-job creation.*
- *The costs of these alternatives to employers are unknown.*
- *If these are not much more costly than overtime, then they may be socially preferable because they can lead to reduced unemployment, a consideration that is unlikely to enter into the decision-making process of employers.*
- *The extent to which new recruits are an alternative to overtime hours depends upon the degree to which the new recruits possess (or can quickly possess) the skills of those doing the overtime work. On this we have little systematic evidence. It appears that there is some mismatch, and that this will constrain, but by no means eliminate, the job-creation potential of reduced overtime.*
- *Aggregate demand policies (monetary policy, fiscal policy, and exchange rate management) are the conventional job-creating tools of government. They are, however, unlikely to be sufficient for various reasons: they are beyond the purview of the Ontario government; they have not worked well in practice to eliminate unemployment; and the recent high unemployment suggests that new policy initiatives, including worksharing, may be required.*
- *Similarly, training, mobility, and labour market information policies to reduce structural and frictional unemployment have still left us with high unemployment in Canada. Hence, we are left with the search for new alternatives, including worksharing options.*

- *Economists tend to express concern that those who vigorously promote worksharing policies assume that there are a fixed number of jobs in the economy — that one person taking a job means that another person does not have a job.*
- *Although this may be true for particular jobs, it is not true for the economy as a whole. Nevertheless, in periods of high unemployment there may be a scarce number of jobs to allocate, and in the short run worksharing may be a viable mechanism to reduce unemployment.*
- *Worksharing can exist in various forms: unemployment-insurance-assisted worksharing; early retirement; paid and unpaid leaves; delayed school-leaving; and restrictions on overtime. Each of these has its pros and cons.*
- *At a minimum, it would be desirable to amend Employment Standards legislation to remove barriers that seem otherwise to inhibit parties from voluntarily reducing their working time.*
- *Such barriers are prominent in many fringe benefits that have a component which is fixed per employee rather than being hourly or payroll related. Such fixed costs encourage employers to work their existing employees long hours to amortize those fixed costs, rather than to hire new workers and incur the fixed costs.*
- *This is the case with both statutory and negotiated paid holidays and vacations, sick leave, severance pay, and retirement allowances. It is also the case with life insurance, sickness insurance, or disability insurance plans where premiums are based on regular pay, not including overtime income. This also applies to pension plans if pension benefits are based on regular pay and not overtime income. Ceilings on employer contributions to Workers' Compensation, Unemployment Insurance, and the Canada Pension Plan also create a fixed-cost component.*
- *By requiring employer contributions to be based upon hours or a per cent of earnings, rather than being fixed per employee, such a bias against worksharing could be removed; this may reduce long hours and encourage new hires. For this reason, such policies should be given serious consideration.*

CHAPTER 15

Health and Safety and Social Aspects

As stated in the introductory chapter, the initial impetus for the establishment of the Task Force came from the apparent anomaly of large amounts of overtime being worked at the same time that numerous people were unemployed or on layoff. The emphasis thus has been on restrictions on overtime as a form of worksharing, in the hope of creating new jobs and reducing unemployment.

Although there is this emphasis on worksharing and job creation, there is also a broader set of social issues that are relevant to the overtime issue. These include the relationship between overtime and health and safety and absenteeism, women's issues pertaining to overtime, and the broader issue of worktime reduction to improve the quality of work and family life.

Health and Safety Issues

As indicated in Chapter 3, health and safety issues were always part of the rationale for hours-of-work and overtime legislation. In fact, the original legislation embodied in the Factories Act of 1884 had as its primary rationale the "protection" of the health and safety of women and youths. For these groups, a maximum of 10 hours per day and 60 hours per week was specified. The legislative change in 1944 to the 8-hour-day and 48-hour-week maximum, however, was largely motivated by a desire to share the work among the returning troops and to provide a minimum standard and safety net for all workers. Nevertheless, the concern that long hours may be detrimental to health and safety was always in the background, as part of the minimum standards for all workers.

That health and safety issues were not paramount, however, is evidenced by the numerous exemptions, special provisions, and permits that were a feature of the new legislation. In essence, health and safety issues, whatever their degree of prominence as a rationale for regulating hours, were allowed to be traded off to attain flexibility. If health and safety had been a paramount rationale, then surely the standards would be more uniformly applied, or exemptions and special considerations granted only where health and safety was not jeopardized.

The declining importance of the health and safety rationale may reflect the fact that health and safety was not so much at issue once the average workweek declined substantially from its historically high levels of 60 hours or more. It may also reflect the fact that empirically there is no consensus on the relationship between long hours and overtime on the one hand and health and safety on the other.

Theoretically, there are obvious reasons to suspect that long hours can lead to problems of health and safety. Fatigue can set in, and this can lead to accidents. Long hours can mean greater exposure to hazards and hazardous substances; the latter is of critical concern if specific periods of rest are required to restore normal bodily functions. Overtime work may also be a departure from the normal work routine and work groups, and this change can lead to more accidents (albeit routine situations can also lull one into a false sense of security, which can lead to more accidents).

Although the theoretical possibility is there for a link between long hours and health and safety hazards, it is extremely difficult to test for that link empirically — in part because overtime work is often associated with other factors such as speed-up, lack of supervision, the introduction of new and untested equipment, or the continuous operation (and, hence, lack of safety maintenance) of existing equipment. In such circumstances it may be these other factors, and not the long hours, that cause the accidents. It is also a distinct possibility that, under those conditions, new and inexperienced workers would be more accident prone than the experienced workers who are working overtime.

Given that overtime is often utilized to meet temporary peak demands, then normal routine safety practices also may be bypassed under those unusual circumstances. Again, it may not be the long hours causing the problem; rather, the bypassing of normal safety standards may create the difficulties.

It is also the case that long hours means more of an opportunity to be exposed to a hazard even if it is no more likely to present itself during the overtime hours. That is, a constant accident rate per hour (including overtime hours) obviously means that a person working long hours is more likely to experience an accident than a person working fewer hours.

Perhaps because of these problems of sorting out cause and effect, and of controlling for the effect of other factors, there is no consensus in the empirical literature on the relationship between long hours and overtime work on the one hand and health and safety on the other. Most empirical studies in this area do find a positive relationship between overtime hours and occupational injury and accident rates (Smith 1972, 1976; Koshal and Koshal 1973; Gaunt 1980; Kriebel 1982; and Schuster and Rhodes 1985). These studies, however, do not help us to disentangle the underlying cause and effect relationship at work. Specifically, when overtime hours are worked, other changes are also occurring. For example, supervision may be lax, or the pace of work may be increased, or the nature of the work may be different (for example, emergency repairs). These may be the causal factors — not the fatigue effects from overtime — that give rise to the higher accident rates. And if that is the case, then substituting new workers for the overtime hours of existing workers would not reduce accident rates unless the underlying causal factors (supervision, pace) also changed. In fact, as discussed previously, accident rates could increase given the possible inexperience of the new workers. Unfortunately, the existing empirical evidence simply does not allow us to disentangle the relative importance of these various determinants of accident rates that simultaneously change when overtime hours are worked.

Overtime and Absenteeism

There is also concern that overtime may lead to subsequent absenteeism. This could occur, for example, because overtime leads to fatigue or because workers have a fixed amount of time that they want to work. The effects could also be cumulative; if overtime leads to absenteeism, that in turn leads to the need for overtime to replace those who are absent.

The relationship between overtime and absenteeism is likely to be affected by whether the overtime is voluntary. If it is not, then workers would be more likely to use subsequent absenteeism to offset their having to work overtime. If it is voluntary, however, they could refuse the overtime to arrive at their desired hours of work, rather than use subsequent absenteeism. The overtime premium may provide some incentive to do the overtime work even if it is voluntary, and then to arrive at one's desired hours of work by increasing absenteeism. The absenteeism, however, is unlikely to be as strong as when the overtime is involuntary.

There is in fact some empirical support for this notion that the relationship between overtime and absenteeism is likely to depend on whether the overtime is voluntary. Walker and de la Mare (1971) found no relationship between overtime and absenteeism, when the overtime was voluntary. In contrast, Martin (1971) and Jamal and Crawford (1981) found a positive relationship between overtime and absenteeism when no distinction was made between voluntary and involuntary overtime, albeit the latter study found that the relationship was not quantitatively substantial. In essence, the limited evidence suggests some positive relationship between overtime and subsequent absenteeism, albeit not when the overtime is purely voluntary.

Even if there were a strong positive relationship between overtime and subsequent absenteeism, it is not obvious that public policy should try to inhibit overtime to reduce absenteeism. Presumably employers would be aware of this relationship, and it would simply be part of the cost of using overtime (along with the overtime premium and any other overtime cost). Employers may well prefer the employee to work the overtime, even if that should lead to subsequent absenteeism, because of the importance of those overtime hours. In essence, the possible absenteeism costs should be fully internalized in the employer's decision to use overtime. There seems little role for government intervention for that reason, except perhaps to inform employers in general of any possible relationship between overtime and subsequent absenteeism.

Women's Issues

Issues pertaining to hours of work can be particularly important to women and dual-earner families, especially to provide flexibility between labour market work and household work. As well, it is useful to know if women would be adversely or positively affected by restrictions on overtime, and whether any new potential job creation would occur in female-dominated jobs. In providing this information, we draw extensively on a background report prepared for the Task Force by Roberta Edgecombe Robb and Morley Gunderson, entitled *Women and Overtime*.

Gender Differences in Hours of Work

A basic descriptive picture of gender differences in various dimensions of hours of work for full-time workers in Ontario in 1985 is presented in Table 15.1. Clearly, males tend to work longer workweeks, as evidenced by their averaging 42.2 hours compared with 38.1 hours for females, and by the greater proportion of males who work over 40, 44, 48, and 60 hours per week. Males who work overtime or extra hours tend to average 8.7 of such hours per week, compared with 7.1 for females; over the whole full-time workforce (including those who work no overtime or extra hours), this averages 1.36 of overtime hours per week for males, and 0.74 hours for females. Clearly, overtime is a more prominent phenomenon for males than females, although it is not inconsequential for females. In addition, although not shown in the table, the growth of extra hours worked over the period 1975-1985 is much higher for females than males, largely because of the growth in the proportion of the female workforce that works long hours.

Females tend to work less overtime both because they tend to work in occupations and industries other than those where overtime is prominent (for example, in the skilled, blue-collar manufacturing jobs), and because they tend to work less overtime in a given occupation and industry. The data do not reveal whether their propensity to work less overtime occurs because they are not offered as much overtime (for example, if it is allocated on the basis of seniority), or because they tend not to accept it when it is available.

As illustrated in Table 15.1, whereas 41 per cent of the overtime or extra hours worked by males occur in manufacturing, for females the preponderance of overtime (also 41 per cent) is worked in the service sector. In large part, this reflects the predominance of males in manufacturing and the predominance of females in the service sector. For both males and females, the extra hours worked are disproportionately in managerial occupations. For males, however, many of the extra hours are also worked in the processing occupations, while for females they occur in clerical jobs, again reflecting the different occupational distribution of the male and female workforces.

Overall, it seems clear that females do not work as much overtime as males and hence would not be as affected as males by policies to restrict the use of overtime. This is a two-edged sword. It means that females would be less likely to be restricted from working overtime if such restrictions are enhanced. It also means that they are less likely to receive the benefits of a higher overtime premium, if that mechanism were used to discourage the use of overtime. Whatever mechanisms are employed to restrict the use of overtime, they are disproportionately less likely to affect females than males.

Effect of Overtime Reduction on the Job-Creation Potential for Women

The previous discussion referred to how females who worked long hours would be affected by policies designed to restrict those long hours. Females may also be affected by the potential job-creation effects of reductions in overtime. The extent to which this will occur depends upon the extent to which reductions in overtime will be translated into new jobs in general, and whether those new jobs will be occupied by females.

The job-creation potential of reductions in overtime was discussed in Chapter 12. In general, it is not substantial, at least for most of the feasible policy options that could be used to reduce overtime. The job-creation potential for women would be further reduced by the fact that women tend not to be prominent in many of the occupations and industries where overtime is extensively worked (for example, in high-skilled blue-collar jobs). Given the existing occupational and industrial segregation of the workforce by sex, it is unlikely that females would occupy many new jobs that may be created by the reduction of overtime in jobs where they already are not extensively employed.

Certainly, it is theoretically possible that reduced hours of work in certain male-dominated jobs could lead to increased employment for females, perhaps in the form of part-time work. Nevertheless, the current occupational and industrial segregation of the workforce suggests that these effects are unlikely to be substantial. In essence, the limited job-creation potential that may occur from restricting overtime is unlikely to benefit females substantially, at least relative to males. Certainly, overtime restrictions cannot be looked upon as a panacea for the employment problems of women.

Illustrative Job-Creation Calculations for Ontario

Some illustrative calculations of the effect that overtime restrictions would have on the job-creation potential for women in Ontario, as of 1985, are provided in Robb and Gunderson (1987). Eliminating the overtime and extra hours of females would yield the equivalent of approximately 30,000 full-time jobs that could be filled by other females. If one assumes that approximately half of such workers are covered by the Employment Standards Act, and that about half of the hours reductions would be converted into new jobs (as discussed in Chapter 12), then this would yield 7,500 job equivalents. These represent, respectively, about 1.1 per cent and 0.56 per cent of the full-time female workforce. The

Table 15.1

Gender Differences in Various Dimensions of Hours Worked, Ontario, Full-Time Workers, 1985

	Males	Females
Average weekly actual hours	42.2	38.1
% of workers averaging over		
40 hours per week	33.2	15.7
44 hours per week	25.0	10.3
48 hours per week	17.6	6.5
60 hours per week	7.3	2.3
Average overtime and extra hours per week		
per worker who works extra hours	8.7	7.1
per worker, averaged over all workers	1.4	0.7
Distribution of overtime and extra hours by industry	100.0	100.0
agriculture	0.0	0.0
other primary	2.2	0.0
manufacturing	41.0	20.8
construction	6.3	0.0
transportation & communication	10.1	5.6
trade	11.6	13.9
finance	3.7	8.5
service	17.2	41.0
public administration	6.5	8.0
Distribution of overtime and extra hours by occupation	100.0	100.0
managerial	34.4	45.1
clerical	5.6	26.1
sales	5.1	7.7
service	6.5	6.9
primary	2.2	0.0
processing	27.4	9.7
construction	6.9	n.a.
transportation	5.9	0.0
materials & other crafts	5.8	0.0

Source: Calculations based on special tabulations by Statistics Canada from the Labour Force Survey.

extent to which this would be offset by males taking some of these jobs remains an unanswered question.

Female job creation could also occur through the reduction of overtime and extra hours of males, although the extent to which this would occur is uncertain since evidence is not available on the substitutability between male hours and female employment. Eliminating the overtime and extra hours of males could yield the equivalent of approximately 70,000 jobs at average hours. If one assumes half of such males are covered by the Employment Standards Act, and that about half of the hours reduction would be converted into new jobs, then this would yield job equivalents of 17,500 jobs. The majority of these jobs, however, are in the male-dominated occupations of processing, construction, transportation, material and other crafts, and primary occupations. Hence, it is unlikely that potential new job creation resulting from restricting male hours would benefit females significantly. There may be greater female job-creation potential if the hours of younger males were restricted, because there is some empirical evidence to suggest that females and younger males are good substitutes in production. The numbers here are small, however, amounting to a maximum of about 1,750 jobs.

Overall, the job-creation potential, even from a policy that would eliminate *all* overtime and extra hours, would be relatively small for women. This is especially so because, for those female-dominated jobs for which other females could be the job recipients, overtime hours are not as pronounced; and for those male-dominated occupations where overtime is more pronounced, females are unlikely to be the job recipients given the occupational segregation of the workforce.

Women and Voluntary Overtime

The one area where women may disproportionately benefit from restrictions on the use of overtime pertains to the voluntary nature of overtime. Women who work in the labour market are often in single-parent families or part of a multiple-earner family. In either case, having the right to refuse overtime may be extremely important to facilitate the carrying out of household tasks, especially those pertaining to the care of children whose hours in school or daycare may be set at certain times. Involuntarily having to work overtime may seriously interfere with having to pick up children at daycare or being at home when children return from school.

The increased importance of multiple-earner families makes voluntary overtime particularly important. Such families may want to reduce the labour market work for either or both partners, given the substantial total hours that they jointly work in the labour market. They may regard this as essential for family time and household tasks, given that such time is already scarce because both parties are working in the labour market. Clearly, in today's changing labour market, the voluntary nature of overtime may be increasingly important for men as well as women.

The potential for concern is highlighted by the fact that the overtime and extra hours worked by persons in multiple-earner families do not substantially differ from those worked in single-earner families. Unpublished data from Statistics Canada's Survey on Work Reduction, conducted as a supplement to the June 1985 Labour Force Survey, indicate that persons in single-earner families average about 1.15 hours of overtime and extra hours per week, compared with 0.95 hours for persons from multiple-earner families. This difference is owing mainly to the higher incidence of overtime worked by single earners as opposed to multiple earners; that is, 14.7 per cent of employees from single-earner families work overtime or extra hours, compared with 12.4 per cent from multiple-earner families. The fact that persons in multiple-earner families work almost as much overtime and extra hours as persons in single-earner families suggests that the right to refuse overtime may be a potentially important provision, especially for persons in multiple-earner families and with family responsibilities. Unfortunately, direct evidence on this point is not available, since the data do not indicate whether the overtime or extra hours worked are voluntary or not.

Gender Differences in Preferences for Worktime Reductions

Evidence from the Survey on Work Reduction indicates that preferences for reduced worktime with a corresponding reduction in pay were only slightly greater for Canadian females (31.9 per cent) than males (29.8 per cent). For females of typical childbearing and child-rearing years, however, the preferences for reduced worktime were stronger (39.5 per cent for females aged 25-34 versus 32.2 per cent for males of the same age group), although even these differences are not substantial. Based on this same data set, the Conference Board of Canada (1986) indicated that women between the ages of 25 and 34 and with household income in excess of $60,000 per year expressed the strongest preference for such worktime reduction (64 per cent of such women, versus 32 per cent for all women).

In essence, preferences for worktime reduction are not substantially different for males than for females overall; however, when the family income is sufficient to afford such a reduction, women of childbearing and child-rearing ages do have a substantially stronger preference for worktime reduction. For this group especially, having the right to refuse overtime likely would be particularly important, as would jobsharing or any other policies that would permit more flexible worktime.

Worktime Reductions, Family Life, and the Quality of Work

The previous discussion illustrates how issues relating to overtime in particular, and hours of work in general, can have important implications for broader social issues pertaining to family life or the quality of work. The issue is particularly difficult because some families may value the additional leisure time from a reduced workweek, while others may value the additional income from working longer hours. Some may choose to have one family member work a long workweek (perhaps a regular 40-hour schedule plus 10 hours of overtime), with the other party being primarily responsible for household tasks. Other families may choose to have both partners work in the labour market and for each to minimize doing any overtime or extra work so as to preserve family time.

The long-run historical decline in hours of work is also indicative that, as we have become wealthier as a society, we have taken much of our wealth in the form of increased leisure time. This has occurred in various forms: the shorter workday and workweek, increased holidays and vacation time, delayed entry into the labour force, and earlier retirement.

There is not likely to be a broad public consensus on the appropriate role of public policies with respect to such worktime arrangements. One perspective would see a minimal role for public policy, allowing such arrangements to emerge from the interplay of the forces of the market or collective bargaining. The preferences of the workforce for particular worktime arrangements would confront the equally compelling needs of employers to reduce costs and to have flexibility in their worktime arrangements, and there would be little or no rationale for public policy to interfere with those decisions on the grounds that people "should" have more leisure time or family time, or that the quality of work would improve if people moderated their working hours. Individuals or families are regarded as making their own best decisions. For some that may mean long hours and more pay; for others, less income and more leisure time. The role of public policy would be simply to facilitate the emergence of whatever worktime arrangements the parties agree upon. As discussed previously, this may mean reducing barriers (such as some payroll taxes that create quasi-fixed costs) that have the unintended side effects of inhibiting the parties from agreeing to shorter-time work arrangements.

An alternative perspective would rationalize a stronger role for public policy to encourage worktime arrangements that allowed for more family time or leisure time. The rationale for encouraging such changes is the belief that, once these changes are made, people will adapt to them and prefer them to their previous worktime arrangements. Yet people are unlikely to change to the new arrangement individually, perhaps because of inertia or perhaps because their individual changes would be out of step with what others were doing. That is, collectively they would prefer the new worktime arrangements once made, but individually they will not make them unless there is some impetus, perhaps through public policy initiatives.

Clearly, this second perspective rationalizes a stronger role for public policy initiatives than does the first, which was based simply on removing barriers that inhibited the private parties from negotiating their own hours-of-work arrangements. This second perspective rationalizes a role for public policy to initiate collective responses (for example, through legislative changes) to establish new working-hours arrangements that would not have been established, at least at the same pace, through private personnel policies or even collective agreements.

The Task Force takes an intermediate position. That is, legislators ought not to try to determine the hours of work that are best for workers and their families, based on some abstract notion of what is a socially desirable workday, workweek, or working life. That must be determined in large part by the interaction of the preferences of employees and employers, through market forces and through collective bargaining. Yet legislation need not be a purely passive force, simply removing the barriers that inhibit the parties from working out their best individual arrangements.

As discussed in the introductory chapter, labour standards legislation may be appropriate to establish a minimal standard or safety net for those with little individual or collective bargaining power. Such legislation may also reflect a higher standard of a community norm, echoing a collective notion of what are considered to be desirable worktime arrangements. This must be guided largely by the norm established through the private arrangements that are worked out by the parties under a reasonable degree of information and individual or collective bargaining power. In certain specific cases, legislation may also play more of a "leading-edge" role, experimenting with new standards that are not common in personnel policies or collective agreements, in the hope of prodding the parties to adopt such policies for which there is broader social agreement. Obviously, the appropriate mix of such legislative intervention will vary according to circumstances and over time, such social standards being a dynamic, evolving concept.

Although there may not be a general social consensus on the appropriate mix of such legislative initiatives, there is more general agreement that there is a basic role for public policy at least to provide information to facilitate the private parties in making informed decisions about their hours-of-work arrangements. It may be appropriate for governments to encourage such innovations, perhaps in their own employment relationship or perhaps by funding innovative pilot projects or providing information on successful and unsuccessful innovations. The appropriate amount of resources to donate to such an activity may be difficult to establish — formally, it would require a social cost-benefit calculation. Nevertheless, at least *some* public resources toward such activities seem merited.

The rationale for government intervention in these areas stems from the fact that neither the private market nor the process of collective bargaining has sufficient incentive to provide what could be considered the socially optimal amount of information or innovation pertaining to personnel policies, including alternative worktime arrangements. This is so because the party providing the information or innovation bears the full cost, yet the benefits may spill over to other parties who can also use the information or who may emulate the innovation if it is successful. Since there is not an automatic market mechanism for those who bear the cost to be compensated by those who benefit, there will be insufficient monetary incentive for private parties to provide such information or to innovate.

For example, employers individually may feel that there may be some merit in providing a flexible worktime schedule or some other innovative worktime arrangement. They know, however, that if their innovation is unsuccessful they will bear the cost of the mistake, but if it is successful it will quickly be emulated by their competitors. Under such circumstances there is insufficient monetary incentive for employers to engage in innovative personnel policies, even though they may be socially desirable.

SUMMARY OF HEALTH AND SAFETY AND SOCIAL ASPECTS

Health and Safety Issues

- *The original impetus for restricting hours of work was to "protect" the health and safety of women and youths. Over the years, this gave way to the worksharing rationale; however, the health and safety issue was always a relevant consideration.*
- *Theoretically, long hours can give rise to health and safety problems because of fatigue, exposure, and departure from normal work routines. The practice of utilizing new workers rather than working the existing workforce longer hours can also create hazards, however, because of inexperience and unfamiliarity with the situation.*
- *Empirically, there is evidence of a positive relationship between overtime hours and injury and accident rates. The empirical studies, however, simply do not enable one to determine whether the hazards emanate from the long hours or from other changes that are occurring simultaneously when overtime increases, such as an increased pace of work, reduced supervision, or reduced safety maintenance.*

Absenteeism

- *There is some evidence that overtime may lead to subsequent absenteeism when the overtime is involuntary but not if it is voluntary. Whatever the relationship, the effects on absenteeism are likely to be appropriately considered by employers in their decision to use overtime; hence, there is little reason for public intervention to restrict overtime for that reason.*

Women's Issues

- *Since women tend to work shorter hours and less overtime than men, they would not be as affected by policies to restrict the use of overtime.*
- *Nor would they benefit as much by any potential job-creation gains. In female-dominated jobs, for example, reduced long hours could lead to new jobs for other females, but overtime in such sectors is not extensive. For male-dominated occupations, where overtime is more pronounced, females are unlikely to be the job recipients, given the occupational segregation of the workforce.*
- *For these reasons, overtime restrictions are unlikely to be a major women's issue, except perhaps for the right to refuse overtime. This right is likely to be increasingly important to enable families to take care of household responsibilities as well as work in the labour market.*

Quality of Work and Family Life

- *The worktime-reduction issue is also related to the quality of work and family life, although there are alternative perspectives on the appropriate role of public policy in this area.*
- *One perspective holds that worktime arrangements should largely emerge from the forces of the market or collective bargaining; some individuals or families may opt for more income and less leisure, while others may choose the opposite. Public policy in this case could facilitate the private parties in making their own preferred arrangements, perhaps by removing any unintended barriers that may inhibit such arrangements or by making overtime voluntary whenever that is feasible.*
- *An alternative perspective sees a stronger role for public policy to encourage reduced worktime*

arrangements. Once these changes are made, people adapt to them and prefer them to the previous arrangements.

- *Blends of these perspectives are possible with labour standards legislation affecting hours of work to reflect a combination of minimal standards, a community norm, and a leading edge.*
- *In addition, public intervention seems merited to provide information on alternative worktime arrangements — their forms, their pros and cons, and their effects. As well, public intervention is merited to encourage a certain amount of innovation, perhaps through pilot projects or in the public sector. Public intervention may be necessary in these areas because the private parties themselves may have insufficient monetary incentive to provide the information or to innovate, since they would bear the full cost but not be able to reap the full benefit.*
- *Given the diversity of preferences of the workforce and the increased international pressure for employers to be competitive, such innovation and information will be an important ingredient in helping the public understand the implications of alternative worktime arrangements, including restrictions on hours of work and overtime.*

CHAPTER 16

Recommendations

This chapter, in accordance with our mandate from the Minister of Labour, sets out a series of policy recommendations to the Ontario government. The need for a review of the legislation and regulatory practices for hours of work and overtime has been building for some time, although overtime concerns became evident only recently. As indicated earlier in this report, with the sole exception of one important change in 1968 (the number of hours at which the time-and-one-half premium for overtime becomes effective), the important hours-of-work and overtime provisions in the Employment Standards Act have remained essentially unchanged since 1944. The vacations-with-pay standard has not been amended since 1966, and the number of mandatory holidays has not changed since 1975.

All these issues — maximum hours, premium pay for overtime, vacations with pay, and paid public holidays — fall within the mandate of this Task Force and have been examined. Recommendations for change are offered. The Task Force also offers recommendations on administrative and regulatory practices, particularly in reference to the apparent lack of compliance with the hours-related limits as established under the Act. The Task Force anticipates that the new set of recommendations will enhance compliance with the Act.

This set of recommendations represents a judicious balance — a near-consensus position of all the members of the Task Force.* In this regard no members really can feel that they fully achieved every objective or are seeing all their favoured recommendations put forward. The Task Force members believe, however, that for the exercise to be most worthwhile, and for the recommendations to carry the most weight with the Ministry — and subsequently with the legislature — it is important to achieve a broad consensus. By and large this goal has been accomplished.

When the Task Force undertook its deliberations, it became clear that several broad options were available for regulating hours of work and overtime. The public interest in generally limiting long-hours work and excess overtime could be realized by using price constraints only (that is, through the application of steeper overtime premiums at various weekly hours levels), quantity restraints only (by establishing maximum-hour limits, with some flexibility introduced through a permit system), or a blend of both systems. Under the pure price model, a firm requiring emergency or any other overtime work would simply pay the extra overtime costs mandated by the Employment Standards Act. Under the pure quantity restraint model, a firm requiring extra overtime work would seek an exemption via a special permit from the Ministry. As discussed in this report, the Employment Standards Act imposes a statutory limit on maximum hours but provides firms with flexibility, using a blend of both price and quantity restraints. As will become evident in this chapter, the Task Force has decided to maintain both restraints.

The most controversial aspect of our recommendations relates to the continuation of a version of the permit system. Although the permit system appears somewhat messy to outsiders, and certainly has its critics, it has worked reasonably well according to the judgment of most of the parties involved. The permit system provides the Ministry with discretion to limit long hours, subject to consultation with the participants, and yet respond to special overtime needs. The compliance costs to firms have been relatively small. The regulatory costs to the Ministry, from the operation of the permit system, are relatively small compared with the administration of other standards, but have grown in recent months with the increased use of overtime by Ontario firms, the increased awareness of the Act's provisions, and more stringent administration by the Branch. Finally, as presently constituted, requests for special permits require both parties to a labour agreement to review the issue and have an influence on any government decision.

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* Ms. Judith Andrew, a member of the Task Force, has dissented from Recommendations 13 and 14. Her comments are included at the end of this chapter.

As discussed in Chapter 1, the Task Force adopted six guiding principles in arriving at its recommendations. In summary, those are:

1. Employment standards legislation should reflect community standards.
2. There is an assumed convergence of business and labour interests on many issues, especially over the long run.
3. Workers and firms should be assisted in adapting to the industrial policies related to technological change and industrial restructuring.
4. Recommended changes should provide flexibility to employees and employers, and they should be practical with respect to compliance and enforcement. The recommendations should assist job creation, not detract from it.
5. The Task Force accepts the continued justification for a maximum-hours limitation in the Employment Standards Act.
6. The hours and overtime regulations in Ontario are working reasonably well. Consequently, the current framework should be maintained to the extent feasible. The compliance mechanism, however, has to be tightened.

The Task Force is offering recommendations in three broad areas: recommendations specific to the hours-of-work, overtime, and vacations-with-pay parts of the Act; recommendations relating to working time reductions in general; and recommendations designed to deal with specific issues that have surfaced as a result of our consultations or are based on our research studies and have a bearing on the hours-of-work standards and practices in Ontario. We have drawn heavily on outside research, the analysis of our own research, and the consultation meetings held throughout the Province.

Task Force Recommendations

1. The standard workweek after which an overtime premium is payable should be reduced from 44 hours to 40 hours.

The standard workweek is that designated level of weekly hours of work after which a mandatory overtime premium takes effect. The consultation meetings and submissions were quite helpful to the Task Force in shedding light on the prevalence and appropriateness of the current 44-hour legislated standard workweek.

Although there was some understandable polarization between labour organizations and business groups, by and large there was the general recognition that the 40-hour workweek has been the standard in Ontario for some time. This was also supported by the Swimmer, Gunderson, and Hyatt research study, which indicated that a workweek of 40 hours or 37.5 hours was common in almost 80 per cent of all collective agreements in Ontario. As a result, the current 44-hour standard workweek that is in the Employment Standards Act is not a constraint affecting most employers, with respect to minimizing the amount of overtime. In addition, 40 hours per week is the legislated standard in the United States at the federal level and in most state jurisdictions. Within Canada, the federal government as well as the provincial governments of British Columbia, Saskatchewan, and Manitoba use a 40-hour standard workweek.

Although 40 hours is the effective standard for many workers in Ontario, there will be some cost ramifications for the relatively few firms that currently do not pay an overtime premium between 40 and 44 hours. Approximately 16 per cent of Ontario's employees work "usual" hours in excess of 40 hours per week, although the vast majority of these workers receive overtime payments after 40 hours. Data from a survey undertaken by the Canadian Federation of Independent Business indicate that 26 per cent of their members have usual working hours in excess of 40 per week. It is rather likely, then, that the reduction in the standard workweek to 40 hours will have a greater cost impact on small firms than on large firms.

2. The mandatory overtime premium rate should remain at time-and-one-half the regular rate of pay, but apply after the new standard workweek of 40 hours.

The Task Force felt that it was desirable to maintain the existing overtime premium, but to have it apply after 40 hours per week. At present, under the Employment Standards Act, the overtime premium rate applies after a 44-hour workweek. In the organized sector, the time-and-one-half premium for hours worked in excess of a scheduled workday, or for Saturday work, seems to be the norm.

Although the Task Force recognized that overtime work could be discouraged by raising the premium to a higher level such as double time, this notion was not adopted. The double-time premium is relatively rare in collective agreements, except for Sunday work. Moreover, some members of the Task Force were concerned that by raising the legislated premium, workers' desire to work overtime would increase rather than decrease. Indeed, the evidence suggests that a substantial proportion of workers desire overtime work, and that under current practices a substantial number of grievances arise over the entitlement to work overtime and how such work is distributed. Finally, some of the Task Force members were concerned with the added cost impacts. Our research suggested that an increase in the overtime premium to double time would not significantly inhibit firms' requiring overtime work, but would increase their costs of production.

3. The current limitation on weekly hours and the 100-hour annual overtime permit system should be eliminated. In place of the 100 hours, employers would have an annual block of 250 overtime hours per employee in excess of 40 hours per week (not transferable). The 250-hour block would be implemented over a period of three years. The block would consist of 400 hours in the first year, 300 hours in the second year, and 250 hours in the third and subsequent years.

Under the Employment Standards Act, the 100-hour permit is available to supplement the 48-hour weekly maximum, bringing the average effective maximum hours to 50 per week (if all 100 hours are used) or an annual (50-week) working time of 2,500 hours. The Task Force recommends that every firm be allowed to employ a worker for up to 250 hours beyond the normal 2,000 annual hours (40 hours per week, 50 weeks per year), so long as the workers consent to the overtime and provided that 45 hours becomes the new average "effective" weekly maximum (that is, the new standard workweek of 40 hours plus the weekly average of 5 hours based on the annual block of 250 hours averaged over 50 weeks).

The Task Force recognizes that for some firms this new environment might present economic adjustment difficulties. Accordingly, it is suggested that the 250 automatic overtime hours be a target to be reached only after two full calendar years. During the first year, a firm would be permitted to use up to 400 hours, and in the second year it would have available up to 300 hours of overtime work per employee. The 250-hour limit would take effect at the beginning of the third year.

By doing away with the weekly ceiling on maximum hours, firms have increased discretion in scheduling their overtime work over a full year. It is entirely conceivable that the reduction from the weekly maximum level of 48 may not prove disruptive at all. The disadvantage of the new automatic block grant of hours is that it does allow for the possibility of some very heavy bunching of overtime work during peak periods of activity or in emergencies; that is, some employees could work very long hours for shorter periods of time. But, as we indicate in the following recommendation, with the exception of genuine emergencies, employees would have the right to refuse overtime beyond a 40-hour workweek.

We anticipate that the annual averaging process adopted here would minimize the burden of administering permits.

4. The current requirement that overtime be voluntary after 48 hours per week should be replaced by a requirement that overtime be voluntary after the new standard workweek of 40 hours.

Under current legislation, a worker has no option but to work overtime, if requested, up to the maximum 48 hours per week. The Task Force feels that this practice is unnecessarily limiting on individual choice, and that the right to refuse overtime work should become effective at the same time as the requirement to pay an overtime premium (that is, after 40 hours per week).

The right to refuse overtime work exists in about one-half of the unionized contracts in Ontario, although it is not known at what hourly level this right takes effect. Even in cases where the formal right to refuse overtime has not been negotiated, there is evidence that many firms effectively follow a voluntary rather than a mandatory regime. In fact, in most workplaces overtime is sought, rather than refused. The right to refuse overtime work would continue to be suspended in emergency circumstances under our recommendations.

The recommendation that overtime be made voluntary fits the notion of acceptable community standards which the Task Force has adopted. The voluntary approach has a sense of fairness and flexibility attached to it. Furthermore, our emphasis on "voluntary" is deliberate. It is consistent with permitting the individual worker some choice in the matter; that is, it enables a heterogeneous workforce containing many two-earner families the ability to schedule their own working time with some flexibility. In particular, women seem to favour this additional amount of flexibility even more than men.

The Task Force does not feel that voluntary overtime will be abused by organized labour to hold up production activities in establishments although this is something that the Ministry might want to monitor for a period. The voluntary approach also compels labour to be responsible with respect to complaints about excess overtime work.

Employers may continue to require workers to exceed the hours limits in the case of an accident or urgently required work, as currently prescribed in section 19 of the Act.

5. An employer may not require an employee to work more than 8 hours per day except as

pertains to agreed-upon regular schedules as determined in accordance with the Act.

Recommendation 4 gives employees the right to refuse overtime work beyond the standard workweek of 40 hours, with exceptions relating to particular types of work schedules (compressed work schedules, averaging, flexible worktime arrangements). This recommendation extends that right to refuse to a daily basis.

If an employer and employee (or employee's bargaining agent) have reached an agreement that involves the working of days longer than 8 hours and the schedule has been registered with the Ministry, the employee has the right to refuse to work extra hours only beyond the regular schedule. Where such an unusual schedule does not exist, the employee may refuse to work extra hours beyond 8 in the day.

6. For regular schedules beyond 8 hours per day, the following shall apply:

- *Compressed work schedules, flexible worktime arrangements, and regularly scheduled hours averaged over a regular period longer than one week may be adopted by the employer upon agreement between the employer and the certified bargaining agent or, where a union is not present, by a majority of the workforce affected.*
- *These schedules may not exceed 12 hours per day. Hours beyond 40 per week (or an average of 40 hours per week in the case of averaged hours) must be paid at the overtime premium rate.*
- *The use of such schedules shall be registered with the Employment Standards Branch.*
- *Ministry acknowledgment of the schedule must be posted in the workplace and shall contain information on the provisions of the Act relating to special schedules.*
- *Overtime work in excess of the daily scheduled hours that have been agreed upon and registered will be voluntary on the part of the employee.*

Under current practices, a firm needs the Director's approval to schedule work regularly beyond 8 hours in a day. We recommend that the need for this approval be completely eliminated from the Act. Our research suggests that in actual practice, the daily maximum of 8 hours was not regularly enforced, and that any real enforcement on long hours occurred at the 48-hour weekly level. As much as possible, both parties should be encouraged to work out voluntary flexible worktime arrangements, subject to a straight daily maximum of 12 hours. An emergency situation would be the only reason to override the 12-hour maximum.

Some control would be maintained by the Employment Standards Branch through the requirement that these schedules be registered with the Branch and that the official acknowledgment be posted in the workplace.

The Task Force believes that the right to refuse overtime is an important protection for the individual employee. In the case where a longer workday or workweek (for averaging purposes) has been agreed to by employer and employee, the employee would have the right to refuse to work hours longer than those regularly scheduled.

7. The Director may issue a permit authorizing hours of work in excess of the block grant of 250 hours. Although there can be no strict criteria for the granting of permits, some of the criteria to be considered would include layoffs, availability of labour, and skill shortages.

8. The labour union, where present, should be consulted by the Director regarding the granting of permits for excess hours.

Once the allowable block of overtime hours is used, an employer would have to obtain a permit in order to work additional hours. Unlike the current 100-hour permits, these permits would have automatic sunset clauses so that once the permitted hours are worked, an employer must reapply to the Branch for a new permit. The Branch should continue its present practice of negotiating the actual number of hours granted by the permit. The use of the questionnaire developed in response to growing pressures in 1985 and 1986, should also be continued.

Before a permit could be issued, the labour union, where present, would be consulted by the Branch. This is basically the system that has emerged over the past year in the Ministry. The Branch would continue to ask employers to justify requests for permits and investigate whether the firms are taking any measures to reduce the need for such excess hours. Responsible actions in this regard would include calling back workers from layoff, and hiring and training additional workers.

The Task Force feels that there can be no strict set of criteria for the granting of permits. In cases where no workers are on layoff from the firm, where there is a shortage of labour, or where the available labour does not have the needed skills, the employer would have a strong case for being granted a permit to work excess overtime hours.

The permit could be conditional on the employer's implementing programs to reduce the need for excess hours in the future. Such initiatives could include training programs for laid-off or new workers to increase skill levels, and recruitment strategies to fill key positions. Finally, the Branch cannot ignore the state of the international competition in the industry when granting permits. This is already reflected in the heavy concentration of the special permits in the transportation industry in Ontario. We expect this heavy concentration to continue.

9. The issuance of overtime permits should be subject to an appeals procedure by expanding the role of the referee system to make it more responsive to hours-of-work issues.

The Task Force considered a variety of options with respect to designing an appeals procedure responsive to permit decisions and other hours-of-work issues. Clearly the system has to be fair, speedy, and flexible. The working assumption of the Task Force is that the automatic annual grant of 250 extra overtime hours is sufficiently large and provides adequate flexibility to limit the number of requests for overtime permits, once the two-year adjustment phase is completed.

One option discussed was the establishment of a tripartite hours-of-work appeals tribunal. The Task Force concluded that to set up a brand new tribunal system would be costly and inefficient, and in the few cases that the tribunal might adjudicate, the process would likely be quite slow.

The Task Force concluded that the Employment Standards Branch remains the appropriate key agency for the appeals role, but the appeal mechanism should be broadened to incorporate specific hours-of-work and overtime issues. The present panel of referees, which primarily adjudicates compensation disputes, could handle any disputed issues relating to the granting of permits and other hours-of-work appeals.

10. When an application for an overtime permit is made, the union or other recognized employee group should have the right to information regarding hours worked within the establishment. This information should pertain to the group for whom the permit is being sought.

The Task Force recognizes that the Employment Standards Branch frequently faces a difficult task in deciding the worthiness of a firm's request for overtime hours.

We have recommended that the union and/or employee representatives be involved in the permit process. This process has become the Branch's operating procedure, and we recommend that this continue and be officially recognized.

In order for the union to make a more meaningful contribution, it should be able to base its position on the same hours information that is available to the employer. This is not a right to unlimited information, but to data on hours worked relevant to the employees for whom a permit to work extra hours is being sought. The format of the data should protect the confidentiality of the employees involved.

11. When the union suspects a violation of an hours-of-work provision of the Act, it shall have the right to receive from the employer information regarding hours worked by the group for whom the violation is suspected. Information provided must respect the confidentiality of the individual employee. The employer may refer the matter to the Branch should the union request be unreasonable — for example, too detailed or too frequent. Similarly, if the union is unable to obtain the data requested, it may work through the Branch.

The Task Force realizes that some monitoring regarding hours of work can be carried out by the parties involved, leading to increased compliance with the hours-of-work standards without substantially increasing the workload of the Branch.

When a union has good reason to suspect a contravention of the hours-of-work provisions, it may request from the employer relevant information on hours worked. As stated in the recommendation, the employer would have recourse to the Branch if the union request were believed unreasonable. This is to reduce the possibility of the union's making such requests unnecessarily. On the other hand, to ensure the union's ability to secure pertinent information, it too could work through the Branch to obtain the data requested.

In all such transfers of working time records, the Task Force believes it is crucial that the anonymity of individual employees be preserved and that the data be formatted in a way that ensures that confidence.

12. The Employment Standards Act should be changed to provide for time-off at the premium rate in lieu of overtime pay at the premium rate when both parties are in agreement. Such time-off is to be taken within one calendar year of being earned.

There seems to be considerable interest in allowing time-off-in-lieu arrangements at the prescribed overtime premium rates if the arrangement is agreeable to both parties. Indeed, in our view it would be appropriate to recognize such practices, which are particularly widespread among smaller firms. As it stands, only about 20 per cent of the negotiated agreements covering about 30 per cent of the covered workers permit the employee to choose between pay or time-off in lieu — both at premium rates. Consequently, at present, a large number of workers who work overtime do not have the right to request compensatory time-off at the premium rates.

The Task Force expects several advantages to flow from the introduction of a time-off-in-lieu option. Such practices provide increased flexibility to firms and individuals, and in a high unemployment era could result in some additional job creation if, as is expected, the total quantity of paid overtime work were reduced. When voluntarily arranged, it might be mutually agreeable to the parties to add the extra time-off to vacation periods. Hours taken as lieu time will replenish the annual block of overtime hours. For example, if an employee, in working overtime, used 4 hours of the annual overtime block, when the lieu time-off was taken (6 hours being the premium rate), the original 4 hours would be added to the hours still available in the overtime block.

13. An entitlement to unpaid leave should be incorporated into the Employment Standards Act,* as follows:

- *universal entitlement to one week unpaid leave each year after 10 years of service with one employer; and*
- *additional entitlement to unpaid leave beginning 4 years prior to retirement. The entitlement to leave would accrue at the rate of one week per year to a maximum of 4 additional weeks. The 10-year service requirement would also apply to this entitlement. The pre-retirement entitlement would not be available to employees who already have an equal or better provision. This is a one-time entitlement.*

The Task Force feels that the work environment is too rigid regarding working time choice over the life-cycle. The above recommendation was influenced by several pieces of information based on our research.

As noted in Chapter 11, Statistics Canada data suggest that a large number of workers in Ontario — more than one million workers, representing 27 per cent of paid employees — would choose to work fewer hours, with a proportionate cut in pay. A similar proportion of the workforce also desires to work longer hours with proportionate increases in wage income — although we are not recommending any specific policies to accommodate this group of workers.

With respect to the prospects of translating long-hour jobs into full-time work for others, the job-creation leverage seems stronger based on the entitlement to unpaid leave than on a reduced standard workweek or curbs on overtime work. As our research indicates, a reduction in the standard workweek has two employment impacts — one that tends to create full-time jobs and one that tends to offset the job-creation effects. Factors that limit the translation of reduced regular hours into new full-time work for the unemployed include the extra worker productivity that is induced, the skill mismatch problem between those who work long hours and those who are unemployed, and the extra fixed costs of hiring new workers.

A voluntary reduction in working time does not have the same cost ramifications; that is, the effective price of labour should not increase very much, if at all. In sum, satisfying the ability of this group of workers to opt for reduced hours could have a greater job-creation effect than an outright ban on overtime.

Clearly it is important that the unpaid leave entitlement option be flexible so as not to be onerous on the employer, and arranged with the employer to be taken at a mutually agreed upon time within the year so as to minimize scheduling or production problems. In particular, the age-related entitlement option is not designed to increase employers' costs, nor significantly to worsen pension earnings of employees. The entitlement option could be viewed as similar to that of maternity leave, with similar rights to return to work.

Once again we underscore that entitlements are designed to provide employees with flexibility; those who are approaching retirement and who choose to do so can work fewer weeks during the year. It must be stressed that this benefit would not be available as an add-on for employees who already have an equal or better provision.

14. The standard for vacations with pay should be amended to include 3 weeks of vacation after 5 years of service, while retaining the current 2 weeks after one year of service.*

As a new minimum standard, employees would have both the current provision, which allows 2 weeks of vacation with pay after one year of work, and 3 weeks of vacation with pay after 5 years of employment. Statistics Canada's figures for Ontario indicate that a vacation of 3 weeks per year has become the norm for most firms with 20 employees or more. Although comprehensive data for firms employing fewer than 20 workers were not available, the Task Force understands that the monetary and practical burden of this recommendation will fall more heavily on smaller than on larger firms.

The flexibility that the combination of changed statutory vacations and entitlements to unpaid leave provide to workers is set out in the following two tables.

As a result, assuming the 10-year service requirement is met, an employee one year before retirement could opt to take up to 5 weeks of unpaid leave (universal plus retirement-related) plus vacation time (which would be at least 3 weeks under the Task Force recommendation).

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* Ms. Judith Andrew dissents from this recommendation. Her comments are included at the end of this chapter.

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Time Off

Employment Duration (with One Employer)	Vacation Standard	Unpaid Leave Entitlements	Total
1 year	2 weeks	—	2 weeks
5 years	3 weeks	—	3 weeks
10 years	3 weeks	1 week	4 weeks

Retirement-Related Entitlement to Unpaid Leave

Years Prior to Retirement	Unpaid Leave
4 years	1 week
3 years	2 weeks
2 years	3 weeks
1 year	4 weeks

15. The Ministry of Labour should establish a new office or agency to facilitate and consult on innovative worktime arrangements.

Public opinion surveys indicate that individuals strongly desire more flexible working time arrangements, which suggests that there is a strong case for provincial government leadership in this area. The Task Force has spent considerable time, both in its public consultations and in its discussions with government officials in various ministries, reviewing flexible worktime options. As a general principle, the Task Force feels that such arrangements should be encouraged where they are voluntarily agreed to and are of mutual advantage to employees and employers.

Moreover, the Task Force senses that there is a growing demand for such arrangements which is not yet fully expressed, partly because some firms may believe that such schemes may prove awkward or disruptive to their work processes, or because both firms and individuals may not be aware of the variety of arrangements that could be instituted or the productivity gains that stem from a workforce that prefers a more flexible environment. Finally, the Task Force feels that in a world of two-earner families, flexible working time arrangements have particular appeal.

The agency would serve the provincial government with respect to its own workforce as well as providing services to groups in the private sector. The office would assemble a small group of experts to work with interested parties, offering a catalogue of flexible and other worktime arrangements. We should emphasize, however, that the Task Force does not envisage the establishment of a large bureaucracy to undertake this objective.

16. The provincial government should continue to review its work practices and to promote innovative work arrangements for its own workforce, to the extent that these are feasible.

With the assistance of a new office of innovative work arrangements, the provincial government would undertake a serious review of its own work practices and of various schemes or alternatives to promote innovative work arrangements within its own environment. The Task Force feels that the workforce of the provincial government could play an important "demonstration effect" role for the wider workforce of the province.

The Task Force understands that the provincial government is exploring new working arrangements. For example, under the umbrella of Ontario's "Opportunities For Renewal" program, the Province is planning to encourage early retirement among its own employees as a means of dealing with a labour force that is not experiencing sufficient turnover or change. This is an endemic problem for public sector workforces because the environment in general is not one of growth. The estimates are that the government might eventually free up as much as $100 million in salary dollars to use for the reorganization of its own internal workforce. Some specific initiatives to be considered are secondments, sabbaticals, paid leaves, educational assistance, jobsharing, worksharing, and flexible working time. The Task Force agrees with the broad objectives of this organization plan, and would encourage the Province to experiment with productive and imaginative schemes.

17. The Ontario government should consider raising the issue of working time at a federal-provincial conference as a means of placing the subject on the public policy agenda for the future.

The Task Force was unable to recommend any dramatic reductions in the statutory workweek as exists in the example of some European countries.

Despite general appeal to workers, reduced worktime without proportionate reductions in earnings and benefits would cause a host of economic difficulties. Even if this were a worthwhile objective on its own, any measure in this direction would result in sharp increases in labour costs. The Task Force felt that it could not, even in the short term, encourage any disinvestment in Ontario at a time when the industrial outlook is already quite uncertain. Simply put, the Ontario economy is heavily integrated into the large U.S. economy — a development that could increase in the future. It would be irresponsible, and perhaps would cost jobs in the long run, to ignore that fact. Nor for that matter is the United States at this time providing any signals of moving in the direction of shortening the statutory workweek to below 40 hours.

Finally, the research studies sponsored by the Task Force, along with other reports, suggest that a shortened workweek could have the unintended effect of increasing the demand for overtime hours. Moreover, the Task Force viewed the entitlement to unpaid leave as a more flexible scheme for reducing the effective working time over the years without at the same time raising the costs of hiring new workers.

Despite all the above, pressures for reducing working time are likely to become more intense if high unemployment remains and technological job displacement is viewed as a threat to job creation. The Task Force feels that the debate over the shorter workweek should be moved to a higher position on the public agenda. But the debate should shift from the narrow focus of asking which group will bear the cost of the shorter workweek, and should assume a more dynamic focus that examines how the shorter workweek can be integrated with labour market flexibility and the public interest in general.

When future changes in the regular workweek emerge, they may occur quickly or in large discontinuous leaps, or they may emerge very gradually at the margin. In the gradual model, workers could be seen to take their real income (or productivity) gains partly in higher take-home pay, and partly in additional leisure — that is, in reduced worktime.

The provincial government will have to decide whether this development should be encouraged or discouraged. If the answer is the former, then how can it can be accommodated without costs in jobs, considering the competitive international environment Ontario faces?

It seemed clear to the members of the Task Force that significantly reducing working time is no longer a "pie in the sky" issue. Certainly the surveys of worker attitudes indicate that there is strong support for this concept.

The basic message we would like to convey in this regard is that it will be difficult for the provincial government to move on its own accord in this area. The Premier might consider the value of exploring whether or not the federal and provincial governments should aim for a much shorter workweek — or a shorter work year — in the future.

18. The Ministry of Labour should take into consideration long hours of work as a factor when designing or revising occupational health and safety regulations.

19. The Ministry of Labour should initiate a study on the relationship of working long hours to occupational health and safety and to increased exposure to toxic substances.

The Task Force found itself constantly frustrated in trying to come to grips with the issue of long hours and the effects on the health and safety of workers. The research we reviewed was either inconclusive or did not seem to address directly the health and safety aspects of long hours of work. Accordingly, the Task Force recommends that the Ministry of Labour set aside a budget to sponsor detailed research directly on this issue, so that policies can be designed within a more informed environment.

20. The Ministry of Labour should mount a strong publicity campaign with respect to the Employment Standards Act, with special emphasis placed on the hours-of-work and overtime issues.

21. The Ministry of Labour should require the posting in the workplace of the Employment Standards Act and any permits issued thereunder.

The Task Force has been made aware from a variety of sources that there is considerable undercompliance with the hours-of-work sections of the Employment Standards Act. The study by Robb and Robb for the Task Force observed that special permit authorizations should amount to about one million excess hours per year. A rough tabulation of compliance with the special permits suggests, however, that the actual compliance rate is approximately one reported overtime hour for every 24 overtime hours actually worked. This estimate is, of course, sensitive with respect to the assumptions made in the calculations.

This effective compliance rate is far worse than we expected, even though the anecdotal evidence indicated that compliance was extremely poor. Moreover, during the consultative meetings it became clear to the members of the Task Force that both employers and employees poorly understood their rights and obligations under the Employment Standards Act. One must reluctantly conclude that it is often in the interest of both employers and employees simply not to comply with the permit system, and in turn not to report noncompliance. The Task Force believes that the granting of 250 extra overtime hours beyond the standard workweek should result in greater compliance with the permit system.

As it stands, the Employment Standards Act is essentially administered on a complaints basis, with inspectors investigating money-oriented grievances raised by unions or individuals. The Employment Standards Branch undertakes very few spot audits to ensure that hourly work standards are being met. Moreover, it is rather unlikely that sufficient resources will be available to accomplish this adequately in the future.

The publicity campaign will become all the more important if some of the Task Force's recommendations are implemented — particularly the shortening of the standard workweek, the introduction of voluntary overtime after 40 hours, the availability of the time-off-in-lieu option, and, finally, the entitlement of unpaid leave based on years of service and on when the individual plans to retire.

22. The Ministry of Labour should initiate a review of the hours-of-work provisions of the Employment Standards Act on a periodic basis, approximately every 5 years.

This last recommendation flows from the Task Force's realization that community standards and labour market conditions and practices can shift quite dramatically over time. A more systematic schedule of review of the hours-of-work provisions in the Act would be in the public interest.

Dissenting Remarks

Notwithstanding the term "community standards" employed in this report, it is my view that the Employment Standards Act was never intended to do anything other than set minimum acceptable standards primarily for unorganized business. I understand "community standards" to be somewhat higher than an acceptable minimum. The impetus for this Task Force review came from large union organizations whose members enjoy, in many respects, superior employment standards. To the extent that the recommendations proposed in this report extend the leading edge standards achieved through collective bargaining to the non-union sector, this will mean that the impact on smaller firms will be significant. Moreover, recommendations designed to deal with slow growth or decline in certain industries dominated by large firms will also be inappropriate for the majority of smaller firms that do not likewise face an over-supply of workers and other attendant adjustment problems.

Recommendation No. 14, which calls for a third week of paid vacation after five years, puts Ontario on par with British Columbia and more generous than all other provinces with the exceptions of Saskatchewan and Manitoba. Quebec, our near and most similar neighbouring province, requires the third week after ten years of service.

In 1986 CFIB members opposed (65 per cent against) extending the minimum vacation entitlement for longer-serving employees.[1] One obvious reason for the opposition is that smaller firms have considerably less flexibility in staffing than larger firms. One person vacationing from a five-person business means a fifth of the staff is away, whereas one person absent from a firm of one hundred is a tiny fraction. In Ontario, 75 per cent of all businesses have fewer than five employees, while only 2 per cent of firms have one hundred plus workers.

The "job sharing" rationale for reducing working time through increasing vacation periods, shortening hours, etc., is extraordinarily weak in the small firm sector. Small firms are *already* creating the majority of new jobs in the economy. Newly released Statistics Canada data show that Ontario firms of less than five employees created 49 per cent of the net new jobs in the province (full-time equivalents) between 1978 and 1984, and that 70 per cent were created by firms of less than 20 employees.

One possible impediment to small firm job creation is uncertainty with regard to the firm's future prospects and ability to provide stable long-term employment. Currently (January-March 1987), though, over 47 per cent of Ontario members report that shortage of qualified labour is a significant problem for their businesses. Adding a week of vacation for each of a handful of employees will not free up a job, nor will it provide even a temporary job if training requirements are such that a person cannot cover for different vacationers. Even if a job could be created, the problem remains that smaller firms are creating more positions than they can fill with qualified workers.

The "job sharing" rationale is limp for larger firms as well, given that the majority already provide three weeks after five years' service and would therefore be unaffected. The most recent (1985) Labour Canada data showing that 91.6 per cent of unionized establishments and 81.2 per cent of non-unionized establishments provide three weeks' vacation after five years, are deficient in that those data exclude firms with fewer than 20 employees. In Ontario 92 per cent of all firms have fewer than 20 employees, and collectively they employ one-fifth of all private sector workers.

Thus, the recommendation calling for three weeks' vacation after five years will have little, if any effect on job creation, but will exacerbate staffing difficulties for the province's smallest firms. For these reasons I dissent from Recommendation No. 14.

Recommendation No. 13 establishes a new principle, that is, a right of employees to unpaid leave. CFIB members opposed (66 per cent against) the principle of such an entitlement.[2] The qualification of ten years' service contained in the universal entitlement will soften the impact as compared to a general entitlement for all employees. Nevertheless, providing unpaid leave as a right adds rigidities in smaller firms where these kinds of arrangements are made on an informal basis. Small firm owners are proud of their good relationship with employees and they object to seeing every aspect of that relationship codified into law. Not only is a right unnecessary, but it implies and perhaps encourages an adversative employer-employee stance.

By contrast, the recommendation for a pre-retirement entitlement to unpaid leave may provide a benefit to the smaller employer endeavouring to plan for the retirement of his employees. Since the leave would begin four years prior to retirement, the employee would be required to declare his intention to retire. This would fill the planning void created by the demise of mandatory retirement.

My dissent from Recommendation No. 13 on entitlement to unpaid leave is therefore qualified by the planning benefit associated with pre-retirement unpaid leave.

Judith Andrew

NOTES

[1] **Are you for or against extending the minimum vacation entitlement for longer serving employees?** (#126, 1986)

A proposal has been made in one province that its current employment legislation, which allows for a standard two-week minimum annual paid vacation period, be amended to provide for three weeks of vacation after five consecutive years of employment, four weeks after ten years and five weeks after twenty years. At present, half of the jurisdictions provide for a standard minimum entitlement of two weeks; entitlements vary in the remainder up to a maximum of four weeks after ten years.

Arguments for extending the minimum vacation entitlement for longer serving employees: It would improve staff morale. It would increase part-time and full-time jobs.

Arguments against extending the minimum vacation entitlement for longer serving employees: There would be an increase in costs for firms with limited flexibility.

FOR 29%
AGAINST 65%
UNDECIDED 6%

[2] **Are you for or against an entitlement to a week's unpaid vacation?** (#129, 1987)

A provincial task force examining labour issues has received proposals calling for a week's unpaid vacation, in addition to the existing paid vacation entitlement. This would involve amending the provincial employment standards legislation. The unpaid vacation would be taken at a convenient time to employer and employee. Workers could waive the unpaid vacation entitlement if they felt earnings were more important than time off.

Arguments for an entitlement to a week's unpaid vacation: More time off would be offered at a lower cost than paid vacation. It would allow working couples to better match their vacation periods.

Arguments against an entitlement to a week's unpaid vacation: It may force new hirings and increased benefit costs. Losses in production could occur. The concept of reduced working time might gain support.

FOR 36%
AGAINST 58%
UNDECIDED 6%

Appendix A
Task Force and Its Approach

The Task Force

The Task Force on Hours of Work and Overtime was appointed on January 23, 1986, by the Minister of Labour, the Honourable William Wrye, to examine the issues of hours of work and overtime in Ontario and to make recommendations to the Ministry, primarily with respect to the relevant sections of the Employment Standards Act.

The Task Force Members:

Chairman, Arthur Donner

Dr. Donner is an economic consultant with ARA Consultants in Toronto and an Adjunct Professor of Economics at York University. He has been writing quarterly reviews of the Canadian economy for Andras Research Capital for the past 13 years, and since 1983 has written a weekly economics column for the *Toronto Star*.

Dr. Donner studied economics and finance at the University of Manitoba and then the University of Pennsylvania, receiving his PhD in 1968. He has been a member of the research staff of the Federal Reserve Bank of New York and of Canada's Prices and Incomes Commission. He has served as consultant to the Privy Council Office in Ottawa, to the federal Departments of Agriculture, Communications, and the Secretary of State, and to many provincial government ministries. He has taught economics at Temple University in Philadelphia, the City University of New York, McMaster University, and the University of Toronto.

From 1971 to 1982, Dr. Donner was a contributor of "Economic Comments" to *The Globe and Mail's* Report on Business. He is the co-author of *The Monetarist Counter-Revolution: A Critique of Canadian Monetary Policy, 1975-1979*, and the author of *Financing the Future*, both published by the Canadian Institute of Economic Policy. He has written numerous other studies in the fields of human resources economics, finance, communications policy, and macroeconomics.

Fitz. Allison

Mr. Allison, who since 1981 has been Vice-President, Industrial Relations, of Abitibi-Price Inc., has worked in the pulp and paper industry for 26 years. He has also served as Vice-President of Employee Relations with Cominco, and as a Director of Industrial Relations Consulting Services with D.K. Partners, a Vancouver-based management consulting firm. Mr. Allison has been active in numerous industry organizations and served as employer delegate to the Industrial Subcommittee of the Forest and Wood Industries of the International Labour Organization in Geneva. He has a BSc from McGill University.

Judith Andrew

Ms. Andrew is Director of Provincial Affairs, Ontario, of the Canadian Federation of Independent Business. She is responsible for the Federation's legislative action in the province, reflecting the policy directions of the CFIB's 34,000 Ontario member firms. She joined the CFIB in 1982 as the Assistant Director of Research and has also served as Associate Director of Research. Ms. Andrew has also held positions in the banking industry and the management consulting field. She has an MBA from York University.

Sam Gindin

Mr. Gindin is Assistant to the President of the Canadian Auto Workers, and has been the union's chief researcher in Canada since 1974. He has prepared major policy papers for the union in Canada and has authored numerous briefs for submission to all levels of government on such topics as the Canada-U.S. Automotive Trade Agreement, trade with other countries, the agricultural implement industry, the aerospace industry, and the automotive parts industry. Mr. Gindin has also worked as a research officer for the New Democratic Party in Manitoba and taught at the University of Prince Edward Island. He has an MA in economics from the University of Wisconsin.

Ray Silenzi

Mr. Silenzi is the President of Local 1005, United Steelworkers of America, Canada's largest basic steel local. He has a background in trade unions, which began with his employment at Stelco in 1958 and has included positions there as steward, health and safety representative, and chief steward in the steelmaking department. Mr. Silenzi has served as his union's Vice-President as well as having held other elected union positions. He is a member of the Board of Directors of the Canadian Steel Trades Conference, currently serving as Secretary-Treasurer.

The Personnel:

The Executive Coordinator, Margaret Smiley, and the Research Director, Morley Gunderson, began their work for the Task Force in February 1986. Ms. Smiley, a project manager in the Ontario Ministry of Labour, was seconded to work with the Task Force. Morley Gunderson is the Director of the Centre for Industrial Relations and Professor, Department of Economics, at the University of Toronto. The Task Force's administrative office opened in Toronto on

March 5, 1986, and has been ably staffed by secretary Donna Cowan.

Specific research projects were contracted out to the following:

Ronald G. Ehrenberg, Daniel S. Hamermesh, and Robert A. Hart, *Proceedings of a Symposium on Hours of Work and Overtime*

John Kinley, *Current Administration of Legislated Standards on Hours of Work and Overtime*

John Kinley, *Evolution of Legislated Standards on Hours of Work and Overtime*

Fred Lazar, *Hours of Work and Overtime: U.S. Experience and Policies*

Frank Reid, *Hours of Work and Overtime in Ontario: The Dimensions of the Issue*

Frank Reid, *Hours of Work and Overtime Policies to Reduce Unemployment*

A. Leslie Robb and Roberta Edgecombe Robb, *The Prospects for Creating Jobs by Reducing Hours of Work in Ontario*

Roberta Edgecombe Robb and Morley Gunderson, *Women and Overtime*

Eugene Swimmer, Morley Gunderson, and Doug Hyatt, *Collective Bargaining, Hours of Work, and Overtime*

Peter Warrian, *Hours of Work and Overtime: Case Studies*

Klaus Weiermair, *Hours of Work and Overtime: The European Experience*

The Task Force wishes to thank the Ontario Ministry of Labour, the International Labour Organization, and the Ontario Ministry of Industry, Trade and Technology for their assistance.

The Approach

In addition to commissioning research studies, the Task Force sought the input of individuals and groups — employers and employees — concerned about hours-of-work issues. A series of public meetings was scheduled in six centres in the province, and a call for submissions was carried in all major Ontario daily and weekly newspapers. A copy of the notice was sent to unions, employer groups, and other groups, advising them of the mandate of the Task Force and inviting submissions.

The Task Force conducted 11 days of public meetings. A total of 95 presentations were heard and an additional 47 written submissions were received. The parties who made representations to the Task Force are listed in Appendix B.

Schedule of Public Meetings

Toronto: May 27-28, June 19, July 15, 1986
Ottawa: June 3, 1986
Sudbury: June 4-5, 1986
Thunder Bay: June 6, 1986
Hamilton: June 9-10, 1986
Windsor: June 11, 1986

Appendix B
Presentations at Public Meetings and Additional Written Submissions

Presentations at Public Meetings

Aerospace Industries of Canada
Aggregate Producers Association
Al's Cartage
Angus, Iain, M.P.
Arriscraft Corporation
Arriscraft Corporation — employees
Beaver Dental Products (Sybron)
Bell Canada — employees
Board of Trade of Metropolitan Toronto
Campbell Red Lake Mines

Canadian Auto Workers
Canadian Auto Workers — Local 112
Canadian Auto Workers — Local 199*
Canadian Auto Workers — Local 303
Canadian Auto Workers — Local 1520*
Canadian Auto Workers — Local 1535*
Canadian Auto Workers — Local 1967
Canadian Auto Workers — Local 2213*
Canadian Federation of Independent Business
Canadian Manufacturers Association

Canadian Organization of Small Business
Canadian Tool Manufacturers Association
Canadian Union of Public Employees — Local 1000
Canadian Union of Public Employees — Locals 2934 and 2935
Cassidy, Michael, M.P.
Central Ontario Industrial Relations Institute
Centreline (Windsor) Limited
Centreline (Windsor) Limited — employees
Champion Road Machinery
Cohen, Dr. Steven

Council of Ontario Construction Association
Council of Printing Industries of Canada
Coward, Lawrence
Employed/Unemployed Solidarity Group (Windsor Labour Council)
Energy and Chemical Workers Union — Local 593
Falconbridge (Sudbury)
Ferguson, Ken
Ford Motor Company
Fraser, Barry
General Motors Canada

Greater Ottawa Truckers Association
Hamilton and District Chamber of Commerce
Hamilton and District Labour Council
Havco Foods

Hotels, Clubs, Restaurants, Taverns Employees Union — Local 261
Huff, Dan
Hughes, Frank P.
IBM Canada Limited
Inco

Informetrica
International Alliance of Theatrical and Stage Employees
International Brotherhood of Electrical Workers — Local 105
Jimmy "D" Cloverdale Transport Ltd.
John Hill and Associates
Johnston, William
McCulloch, John
Metropolitan Toronto Road Builders Association with Ontario Road Builders Association
McKinnon Transport
Michalak, Thomas
Nipissing Area Council of the O.P.S.E.U.

Ontario Advisory Council on Women's Issues
Ontario Chamber of Commerce
Ontario Federation of Labour
Ontario Forest Industries Association
Ontario Mining Association
Ontario New Democratic Party
Ontario Nurses Assocation
Ontario Public Service Employees Union
Ontario Road Builders Association with Metropolitan Toronto Road Builders Association
Ontario Trucking Association

Ottawa Labour Council
Peters, Dr. D.D.
Preston Sand and Gravel
Private Motor Truck Council of Canada
Provincial Building and Construction Trades Council of Ontario
Ready Mix Concrete Association of Ontario
Reitz Moving Ltd.
Retail Council of Canada
Service Employees International Union
Sharpe, Andrew

Shelski, Frank
Stelco
Sudbury and District Chamber of Commerce
Sudbury Mine, Mill and Smelter Workers Union
TCG Materials
Thunder Bay Chamber of Commerce
Ultrahaul
United Paper Workers Union
United Steelworkers of America — District 6
United Steelworkers of America — Local 1005
United Steelworkers of America — Local 1005 — Health & Safety
United Steelworkers of America — Local 1320

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*United Auto Workers at the time of their presentation.

Walker Brothers Quarries Ltd.
Wallace, Bob
Windsor and District Labour Council

Additional Written Submissions
Abraham, Ernest
Automotive Parts Manufacturers Association of Canada
Banks, John
Booth, William
Bulloch, John V.
Camco Inc.
Canadian Auto Workers — Local 1325*
Canadian Brotherhood of Railroad, Transportation and General Workers
Canadian Business Equipment Manufacturers Association
Canadian Paperworkers Union — Local 238

Chrysler Canada
Class Freight Lines Ltd.
Communications and Electrical Workers of Canada — Local 25
Construction Owners Council of Ontario
d'Oliveira, J.A.
De Clute, J.
Electrical and Electronic Manufacturers Association of Canada
Falconbridge (Toronto)
Faul, David
Fraser, Bruce

Graphics Arts Industries Association
Huff, Dan
International Brotherhood of Electrical Workers
Kenyon, Roger
Kirsch Cooper Industries
Loder-Sutherland
Messer, Gerd
National Amalgamated Local Union of Airline Workers
Northern Telecom
Oakville and District Labour Council

Ontario Automobile Dealer Association
Ontario Hydro
Ontario Motorcoach Association
Ontario Urban Transit Association
Ottawa and District Labour Council
Peel, Eva
Philips Planning and Engineering Ltd.
Porcupine Mine Managers Group
Real Women
Ridge, Mary

Rio — employees
Robert Hunt Corporation
Sabo, Michael
Sargent, John A.
Toronto Transit Commission
United Steelworkers of America — Local 6320
Wolff, Harry M.

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*United Auto Workers at the time of their submission.

Appendix C

Background Reports Commissioned by the Task Force

Ronald G. Ehrenberg, Daniel S. Hamermesh, and Robert A. Hart: ***Proceedings of a Symposium on Hours of Work and Overtime: Labour Market Issues***
These proceedings bring together papers by three internationally known academics who have conducted research on the theoretical and econometric issues pertaining to restrictions on hours of work and overtime. The papers, which were presented at a symposium on June 26, 1986, and commented on by other experts on the topic, are: "On Overtime Hours Legislation," by Ronald G. Ehrenberg; "Overtime Hours Laws and the Demand for Labour, Workers, and Hours," by Daniel S. Hamermesh; and "Hours of Work and Overtime: Lessons from the European Experience," by Robert A. Hart. The papers point out the limitations of policies designed to reduce hours of work and overtime, as well as the limited job-creation potential from reductions in hours of work and overtime.

John Kinley: ***Current Administration of Legislated Standards on Hours of Work and Overtime***
This study outlines the current arrangements for administering Ontario's Employment Standards Act, placing special emphasis on those that control time worked. The provision of information, audits of employer compliance with the standards, and investigation of alleged violations are the principal components of the Branch's enforcement program, and the study presents an overview of the day-to-day work associated with these activities. Although descriptive, this review raises a major question about the design and effective administration of legislation directed at controlling hours worked.

John Kinley: ***Evolution of Legislated Standards on Hours of Work and Overtime***
This study documents key events in the development of Ontario legislation controlling hours of work: the 1884 Factories Act; the 1944 Hours of Work and Vacations with Pay Act; and the 1968 Employment Standards Act. The author discusses the legislation's shift in orientation in 1944, from "protecting" women and youths to emphasizing equitable employment conditions and job creation. His discussions and tables guide the reader through the evolution that has taken place until 1975, the year of the most recent changes.

Fred Lazar: ***Hours of Work and Overtime: U.S. Experience and Policies***
The United States, a major, proximate trading partner of Ontario, has gone through a recent public debate over the pros and cons of restricting overtime to create jobs. As well, the United States offers a multiplicity of experiences with legislation restricting the use of overtime. Although some of the lessons to be learned from U.S. experience cannot be directly transferred to the Ontario setting, they provide insight into the feasibility of certain policy options. This study, in examining the U.S. situation, looks at the Fair Labor Standards Act, reviews hearings on proposals to amend that Act, examines states' laws, and presents a discussion of policy alternatives.

Frank Reid: ***Hours of Work and Overtime in Ontario: The Dimensions of the Issue***
This study, which presents evidence concerning overtime hours, long hours, and nonwage labour costs in Ontario, addresses a number of specific questions. How much overtime is being worked in the Province? Has the amount of overtime work increased over the last 10 years? Who is working overtime? Is overtime work spread evenly throughout the workforce or is it concentrated in specific occupations, industries, or demographic groups? Is overtime mainly a response to cyclical changes in economic conditions or unexpected emergencies, or is it used on a regular, ongoing basis? And, finally, has there been an increase in fringe benefit costs or other nonwage labour costs that has provided an incentive for employers to work their existing employees longer hours rather than recall employees on layoff or hire new employees?

Frank Reid: ***Hours of Work and Overtime Policies to Reduce Unemployment***
This study analyzes and advocates various work-time-reduction policies to improve both equity and economic efficiency. The most significant change discussed is providing employees with an entitlement to voluntary worktime reductions with a proportionate reduction in pay. The author examines fringe benefit costs that are fixed per employee rather than per hour, and notes that such costs bias the employer toward long hours of work and reduced employment. Other policies analyzed include reducing the standard workweek, charging for overtime permits issued under the Employment Standards Act, and increasing the statutory overtime premium.

A. Leslie Robb and Roberta Edgecombe Robb: ***The Prospects for Creating Jobs by Reducing Hours of Work in Ontario***
This study examines the theory and empirical evidence relating to reductions in both overtime and the standard workweek, with respect to their potential impact on job creation. It then builds on this information to provide some empirical estimates of the likely impacts of a number of policies: eliminating long hours; eliminating extra hours worked; eliminating overtime hours; raising the overtime premium to double time; and providing a subsidy to offset some of the costs associated with hiring new workers. The authors' illustrative calculations suggest that, in the Ontario context, such policies are of little value for creating jobs.

Roberta Edgecombe Robb and Morley Gunderson: ***Women and Overtime***
This study examines the hours-of-work and overtime issues that are of particular relevance to women. The study concludes that it is likely that women will be affected less than men by restrictions on hours and overtime because women tend to work shorter hours and less overtime. However, because the new jobs will not likely occur in female-dominated areas, women will not benefit as much as men by any job creation from reduced hours and overtime. Issues such as the right to refuse overtime are likely to be of more importance to women.

Eugene Swimmer, Morley Gunderson, and Doug Hyatt: ***Collective Bargaining, Hours of Work, and Overtime***
In light of the fact that more than half of Ontario's workforce is covered by a collective agreement, this study analyzes the role of collective bargaining in dealing with hours-of-work and overtime issues. The authors examine numerous hours-of-work and overtime provisions in major collective agreements in Ontario as of 1984. They also examine grievance-arbitration cases and conclude that overtime issues are not a major source of grievance arbitration, and that they appear to be declining in relative terms.

Peter Warrian: ***Case Studies on Overtime in Ontario***
This report includes six case studies that provide a detailed analysis of the recent hours-of-work and overtime experience in Ontario: the Hilton Works site of the Steel Company of Canada (Stelco); General Motors of Canada; the Northern Telecom plant in London, Ontario; Abitibi-Price; the Butler Metals manufacturing plant in Cambridge, Ontario; and the 3M plant in London, Ontario. The cases provide a diversity of perspectives with respect to traditional smokestack industries (steel, auto, pulp and paper); high-tech manufacturing (telecommunications); downsizing (steel); and fundamental restructuring (manufacturing).

Klaus Weiermair: ***Hours of Work and Overtime: The European Experience***
In recent years, many European countries have followed a conscious policy of reducing hours of work as a form of worksharing. This issue is a much more prominent part of the policy agenda in Europe than in North America, partly because of the lack of job creation from other sources. Therefore, an examination of the European scene may be instructive in determining whether restrictions on overtime in Ontario may lead to job creation. This study examines the extent and incidence of overtime in selected countries; reviews regulations; considers overtime from the perspective of employer, employee, and union; and summarizes the ongoing debate over governmental policies toward hours restrictions and overtime reduction.

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